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# GOVERNMENT OF ALBERTA

# SUBMISSION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON TRANSPORT

MARCH, 1987

The National Transportation Act, Bill C-18
The Motor Vehicle Transport Act, Bill C-19

Alberta

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# SUBMISSION TO THE HOUSE OF COMMONS
# STANDING COMMITTEE
# ON TRANSPORT

## THE NATIONAL TRANSPORTATION ACT, BILL C-18
## THE MOTOR VEHICLE TRANSPORT ACT, BILL C-19

Alberta Economic Development
and Trade
Alberta Transportation
and Utilities

March, 1987

# FOREWORD

In November, 1986, the Honourable John Crosbie, Federal Minister of Transport tabled in the House of Comomons, Bill C-18 (National Transportation Act, 1986) and Bill C-19 (Motor Vehicle Transport Act, 1986). The legislation contains provisions aimed at reforming Canada's transportation system, from an economic regulatory point of review.

In February, 1987, both Bills were referred to the Standing Committee on Transport for review. The Committee has requested comment from interested parties concerning the legislation. The Government of Alberta agrees that the new legislation is timely and appreciates the opportunity to comment through this submission.

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# EXECUTIVE SUMMARY

The Government of Alberta is strongly supportive of the legislative package contained in Bills C-18 and C-19. The orientation of the legislation to the needs of users of transportation is appropriate and consistent with the requirement for lower cost and more efficient transportation services in the 1980's and beyond.

Alberta's support for the new legislation is based on the view that the legislation is a package, enhancing competition wherever possible and providing regulatory protection wherever necessary. This package produces a realistic balance of competition and regulation. By encouraging competition wherever possible and providing regulatory protection in those situations where competition is either absent or ineffective, Bill C-18 is able to meet the varying needs of the diverse user groups, communities, and regions within Canada. It is this balance which makes this Canadian legislation and not a wholesale copy of American legislation. Consequently all provisions of the legislative package are required, and eliminating pieces of the package will impact on the effectiveness of the other complementary provisions and weaken the legislation overall.

Given Alberta's dependence on transportation and the limited modal choices which are available, Alberta believes it is also important to consider the detail of the various provisions to ensure that they have the intended results. Based on a detailed review of the Bill and extensive discussions with industry and other governments, Alberta has made recommendations for change to some of the various provisions. These recommendations should not be viewed as a lack of support for the provisions themselves, but as a means of making their practical application as effective as possible.

The strength of Alberta's economy is critically dependent on the ability to sell goods and services in distant markets. To access these markets efficient, low-cost transportation is essential. Albertans and indeed all Canadians will be profoundly affected by the fundamental changes now occurring in the world economy that have resulted in a severe downward pressure on commodity prices. In today's environment even a small difference in the price of our goods will affect our competitiveness in the marketplace. As transportation is often a major cost element of commodity selling price, it will be more important then ever for carriers to be sensitive to the need to reduce costs and rates in relation to the realities faced by Alberta's commodity shippers in the international market place.

Passenger transportation is also vitally important to Alberta's economic prospects, particularly, where tourism and the movement of professional personnel are concerned. To effectively compete in tourism, Alberta must improve its accessibility and attractiveness. The availability of convenient and cost competitive air transportation linkages between Alberta and its principle tourism markets is vital to attaining this goal.

In Alberta's view, the shift to a user-oriented, more competitive transportation environment is not only desirable but essential for the future survival of Alberta's export shippers.

The body of this report contains Alberta's comments on the national transportation policy contained in the new legislation, the specific parts of Bills C-18 and C-19, and additional issues Alberta believes are also important considerations for the new transportation environment.

## National Transportation Policy:

Alberta believes a favorable change in the proposed legislation is the introduction of references to safety and regional economic development in the policy statement. Alberta concurs with these amendments to present policy but recommends that the regional economic development clause be expanded to acknowledge that the commercial viability of transportation must be balanced with regional economic development objectives. This balancing is required to allow potential economic strengths of each region to be realized.

Multimodal transportation systems are going to become increasingly dominant in the new transportation environment and Alberta believes that recognition of the growth of the government's role in facilitating the development of multimodal systems should be incorporated into the policy statement.

Rail:

For much of Alberta's export production, rail transportation is the only efficient means of accessing its distant markets. The province's shippers are usually restricted to being serviced by a single rail carrier because of the dominance of one of the major carriers in the northern part of the province and the other in the south. Alberta's concern with this lack of competition within the province has been magnified by the provisions of 1967 National Transportation Act which neither encourages competition between rail carriers nor provides effective recourse for rail shippers who may be adversely affected where competition does not occur. In Canada the railways are a duopoly and hence legislative provisions are required to create competitive conditions.

Alberta's concern with the present legislation and strong support for the new is based on several factors. The freight rate burden on Alberta traffic has been shown to be significant. Traffic into and out of Alberta constituted 28% of system total traffic in 1982 but contributed over 70% to the railways constant costs recovery. Rail rates on most Alberta commodities have risen significantly greater than railway costs over the past number of years and transportation costs now represent a significant portion of the delivered export price.

Bill C-18 will serve to enhance railway competition in Canada through various provisions including confidential contracting between carriers and shippers, elimination of collective pricing between carriers, expanded interswitching, terminal running rights and competitive line rates. The competitive line rates provision is a key element in the new legislative package as it specifically addresses the situation of the remote shipper who lacks a choice of carriers and possesses little bargaining leverage with the railways. The Alberta submission and clause by clause appendix provides specific recommendations to ensure the essential competitive line rate concept is effective.

Provisions for final-offer arbitration, improved public interest appeals and mediation are also important provisions of the new legislation to allow resolution of disputes between shippers and carriers. Final-offer arbitration combined with reparations is a significant part of the new legislation. Key aspects of this provision include shipper access to the process and factors to be considered by the arbitrator when rendering a decision. Alberta has made certain recommendations in this submission for changes to parts of the arbitration provision to ensure use of the process will not be denied to certain shippers and to clarify some of the specific factors upon which an arbitration decision may be reached.

The package of negotiating provisions is delicately and deliberately balanced to address the varying conditions and needs that exist across Canada. Removal of any components will upset this delicate balance and could have an adverse impact on the effectiveness of the other complementing provisions.

Alberta has always had a concern that smaller and medium sized shippers have not enjoyed significant bargaining leverage with railways when negotiating for rates and services. The use of intermediate agencies such as industry associations, brokers, freight forwarders and pool car operators have increased in importance as a means of coordinating shipper needs and obtaining better rates and service levels. Alberta believes it is important that these agencies be recognized as shippers under the new Act so that their customers are are not denied the benefits of the legislation.

A fundamental ingredient of an efficiently functioning marketplace is relevant and timely market information. In a competitive environment, buyers of transportation services can acquire much of this information by comparing rates and services offered by several sellers. However, the amount and quality of information available tends to decrease with the number of competitors. As reflected earlier, the market for railway services in Canada is essentially a duopoly, hence it is very far from the classical competitive market. In other modes in Canada - i.e., air and trucking, information is much more readily available with the numerous different carriers available. As a result, it is necessary to supplement information available concerning railways in the marketplace by requiring the publication of basic information.

As has occurred in the United States, rail cost indexes will become an important part of the rail rate negotiation process in Canada, especially where multi-year contracts are involved. Rail cost indices will also become an important factor to the functioning of the final-offer arbitration mechanism in the new legislation. Alberta recommends that the new legislation be amended to provide for the calculation and publication of such an index.

Rail cost information also represents a vital tool to the working of specific provisions of the new legislation. Even without Bill C-18, there has been a growing need to review railway costing procedures. Alberta believes there is a particular need for a review on a broad basis to determine which cost components are relevant for each of the various end uses required in legislation and recommends that such a review be undertaken as soon as possible.

The major Canadian railways have expressed concerns with Bill C-18 in three main areas: the legislation does not provide them sufficient freedom to manage their costs; certain provisions to regulate rates are unnecessary; and the legislation allows access by American carriers to Canadian traffic. Alberta recognizes that there is a need for the railways to reduce costs and will support them wherever possible in this area. However, Alberta does believe provisions of the new legislation to allow more shipper bargaining leverage in rate negotiations are necessary. Alberta also believes that increased compliance, including the presence of American rail competition for some Canadian traffic will stimulate efforts by Canadian railways to become more efficient and competitive. Alberta believes that the relative position of Canadian carriers to American carriers is enhanced through the extensive penetration into the U.S. by Canadian affiliated lines, and the Voluntary Co-ordination Agreements in place between Canadian railways and other U.S. carriers.

Bill C-18 has the necessary components for a rail line abandonment and subsidy process which balances the public interest with the railways' desire to reduce their cost. In the event rising costs to farmers result in a need to rationalize the prairie branch line system a suitable mechanism must be in place. Some amendments are required in order for the process to be appropriate for the situation in western Canada and to be consistent with the Western Grain Transportation Act. Most important is to improve the provisions for transitional funding. The difficulty is that it is considered after the abandonment decision rather than as part of the process. There must be an opportunity for those who might oppose abandonments to negotiate transitional funding as an incentive to consider other transportation options. Furthermore, the exclusion of grain dependent lines from transitional funding should be eliminated. Since grain dependent rail lines are protected from abandonment to the year 2000, it is appropriate that transitional funding be available over the same time period.

Air:

Alberta strongly supports the central theme of the proposed legislation which is to make the economic regulation of air transportation more responsive to the needs of its users.

Shifting the legislative emphasis from the industry to the consumer will provide a much needed role for communities to directly influence the level of air service which may be provided to them. Alberta also suggests that direct policing will prove far more effective in ensuring high industry safety standards than limiting the level of competitive activity.

Alberta agrees that, for the most part, markets situated north of the 55th parallel "demarcation line" are less capable of sustaining unrestricted competition than markets located south of the line. Alberta recommends the legislation be amended to ensure that the views of affected communities are paramount in assessing changes in service levels.

Alberta strongly supports the provisions of the bill which will permit the negotiation of confidential contracts between air carriers and third parties, and will provide air carriers with considerable flexibility in managing their fares. U.S. experience has shown that the ability to contract can provide new opportunities in the tourism business. However, the provisions for reviewing air fares have a major shortcoming in that only basic air fares are addressed.

Discount fares are a major component of modern fare structures and are important to the development and expansion of Alberta's tourism industry.

Alberta supports the need to safeguard essential air services, but recommends that the bill be amended to include a more detailed description of how the provisions will be administered.

Alberta believes that this legislation will create an environment for competition which will measurably benefit both the air transportation industry, the tourism industry and users of air services. However, for the industry to respond effectively, it must be confident that the operating environment will be stable. Minimizing the opportunities for major changes to operating rules and conditions prior to the four year review period would contribute to the required stability. Alberta also encourages the establishment of criteria that would eliminate barriers to market entry associated with computerized reservation systems. These criteria need not be finalized before the passage of this legislation, but should be a priority item for the agency.

Alberta, like many other provinces, has identified tourism as a potential growth area in its economy. The development of the international tourism markets is almost totally dependent on the availability of convenient and affordable air services.

While acknowledging the federal government's primary role, Alberta is particularly concerned that this legislation proposes no changes to the traditional procedures for dealing with international air service issues. These procedures have not featured a meaningful role for air service users and their endorsement is therefore not consistent with the general theme of the legislation which emphasizes a high degree of user participation. Consistent with other international trade negotiating forums, Alberta recommends that the legislation include the requirement for the appropriate federal body to consult with the affected province(s) in the course of formulating positions and negotiating international air agreements, and that provision also be made for public input to the route award process. Additionally, Alberta recommends that the legislation require designated air carriers to provide a satisfactory level of service or risk the loss of the route authority. Similarly for those international air routes where no Canadian air carrier has indicated a willingness to provide service, consideration should be given to the concept of inviting a foreign carrier to seek the Canadian designation for a minimum of five years subject to review thereafter.

## Extra-Provincial Trucking:

Alberta strongly supports Bill C-19 as it should bring about a very high degree of uniformity of rules and policies among and between all 12 jurisdictions in Canada. However, Alberta is disappointed that the Act will not be implemented until January 1, 1988 and that a "fitness test" will not be made the only entry criteria for new applicants until 1991 when the new Act is sunsetted.

Alberta is concerned that some of the specific wording in Bill C-19 is overly complex and in some cases does not reflect the intent of the Transportation Minister's 1985 Memorandum of Understanding (MOU). Use of actual wording from the MOU in the legislation would clarify Bill C-19 in this respect.

Alberta also has a concern that the legislation could remove provincial Motor Transport Board jurisdiction with respect to various regulatory and licensing provisions.

## Northern Marine Resupply Services:

Three distinct Alberta groups which have an interest in northern marine resupply services are carriers based in the province, communities receiving resupply services, and industries in Alberta which supply goods and materials to the north.

Alberta's traditional role as a "Gateway to the North" will be enhanced by the provisions in Part V such as the extending the terms of licences and regulating the fleet capacity of carriers rather than their individual vessels. However, Alberta is concerned that other modes and routes serving the north may gain a competitive advantage if the application of the new legislation is overly restrictive for any one of the above groups.

## Commodity Pipelines:

As a relatively untried transportation technology in Canada, commodity pipelines should be examined as an opportunity for Canadian shippers to move goods more efficiently in the future. It is the view of the Province that legislation in contemplation of the use of such pipelines, should not be overly restrictive so as to compromise the economic or commercial viability of such systems. The proposed inclusion of "loading facilities, storage facilities, etc." within the jurisdiction of commodity pipeline legislation is a case in point. Similarly, the legislation has failed to effectively address the movement of commodities, such as methanol, in non-commodity pipelines and vice versa.

## Mergers and Acquisitions:

Alberta is generally supportive of the provisions of Bill C-18 dealing with mergers and acquisitions. These measures, in concert with the Investment Canada Act and the new Competition Act should provide adequate control without being too restrictive.

Alberta does not consider it appropriate however to subject provincial government acquisitions of transport companies to the restrictions of the Bill. The province does not believe that when one government acts in the public interest, another government or its agency should pass judgment on its action.

## National Transportation Agency:

It is appropriate that major transportation policy changes are accompanied by revising the role and structure of the industry's main regulatory body.

Alberta supports the establishment of the National Transportation Agency oriented to a more competitive environment. It is desirable that policy-making be in the hands of the Government rather than its Agency, however Alberta values the autonomy of the Canadian Transportation Commission in regulatory matters, and the new Agency should also be granted a similar degree of independence.

Alberta also believes that the new Agency should function with regional offices which possess the authority to address and decide upon regional transport issues.

## Information Requirements:

Two of the key principles of the revised National Transportation Act are the reliance on competitive market forces whenever this is practicable, and the introduction of revised regulatory procedures to better cope with those circumstances when competition is absent or ineffective. Both competition and regulation require relevant and timely information in order to operate as intended, however these needs are not fully addressed in Bill C-18 and C-19. Similarly, information will become key to the function of the Agency to undertake annual and four year reviews of the new legislation.

Disclosure requirements in Bill C-18 are limited and basically designed to protect confidentiality. This may inhibit information dissemination with negative consequences for market efficiency, regulatory procedures and the legislative review process. To offset this risk the legislation should include a clause which will ensure that sufficient public information is distributed to enable the Act to function as intended, and that disclosure constraints are not overly restrictive.

# 1.0 INTRODUCTION

## 1.1 Transportation in Alberta's Economy

The strength of Alberta's economy is critically dependent on the ability to sell goods and services in distant markets. The small, widely dispersed population in western Canada necessitates that many Alberta businesses focus on markets which are often thousands of miles away. To access these areas competitively, efficient low-cost transportation service is essential.

Indicative of the significance of transportation to the Alberta economy is that with just 9% of the nation's population, Alberta originates about 20% and 14% of Canada's rail and for-hire trucking tonnage respectively. This includes 40-45% of the outbound tonnage through the port of Vancouver and most of the barge traffic on the Mackenzie river system. In aviation, Alberta accounts for almost 16% of total domestic journeys flown on scheduled mainline and regional air carriers.

Major Alberta industries such as sulphur, coal, petrochemicals, forest products, agricultural products and tourism tend to be particularly sensitive to fluctuations in transportation rates and service. Collectively, the above commodities accounted for more than $5 billion in exports in 1985. This amounts to 38% of total Alberta exports.

The 1967 National Transportation Act is inadequate for the realities of the Canadian situation in the world marketplace of today. The present legislation neither encourages competition between carriers of a mode nor provides the necessary protection to users where the need exists. The reforms in the various modes contained in Bills C-18 and C-19 will have a dramatic impact on all sectors of the economy, and on the province as a whole.

## 1.2 Impact of Global Economic Restructuring on Alberta

Albertans, and indeed all Canadians, will be profoundly affected by the fundamental changes now occurring in the world economy. Among those which may be most important are: the emergence of newly-industrialized countries as serious competitors, excess supply of commodities exported by Alberta, and increasing protectionism. The consequences of these events are severe downward pressure on commodity prices and much greater sensitivity to small price differentials between competitors.

Comparisons of several key Alberta commodities and rail rates illustrate the different trends in prices over the past several years. Metallurgical coal prices dropped from levels of $90.00/metric tonne in 1980 to $55.00 in 1986. A drop of almost 40 per cent. Rail rates for coal, meanwhile increased over 58 per cent.

Wheat prices averaged $238.00/tonne in 1982. Current prices of $181.00 reflect a 24 per cent decrease. The shipper's portion of grain rates under the WGTA, by comparison, increased 22 per cent.

While lumber prices have recently strengthened to current levels of $275.00 per thousand board feet from lows of approximately $172.00 in 1982, they still remain comparable to the 1979 lumber prices while on the other hand, rail rates have increased by 50% since 1979.

Many of Alberta's important exports have decreased substantially in price within the last year or two. While price declines of this magnitude have occurred before, current circumstances are distinguished by the expectation that depressed prices are a long-term phenomenon. Therefore, large volume export contracts are more likely to be won or lost on the basis of relatively small differences in price. As transportation is often a major cost element of these contracts, it will be more important than ever for carriers to be sensitive to the realities of the marketplace.

In the transportation of freight by rail the lowest cost route is often the shortest route. Provisions of the legislation to allow Canadian shippers to access American carriers in a manner that will provide a shorter route to markets is critical to our products being competitive. The United States represents the major market for both Canada and the province of Alberta. In 1985, almost 80% of Canada's exports and 85% of Alberta's exports moved to the United States. Canada's free trade initiative with the United States could open up vast new markets, with considerable benefits for the Canadian economy. In conjunction with these expanded opportunities, it is vital to have access to the most efficient route to market.

World wide economic changes have also created an impetus for accelerating the development of Alberta's tourism industry. To effectively compete for these tourists, many of whom must travel long distances, Alberta must improve its accessibility and attractiveness. The availability of convenient and cost competitive air transportation linkages between Alberta and its principal tourism markets is vital to attaining this goal.

In Alberta's view, the shift to a user-oriented, more competitive transportation environment is not only desirable but essential. The nature of Alberta's economy, its distant location relative to key markets, and the intensely competitive nature of the global economy make current transportation legislation unsuitable. The Government of Alberta strongly supports the provision in Bills C-18 and C-19 as a package, enhancing competition where possible and providing regulatory protection where necessary. The legislation is an essential step towards developing a Canadian transportation system which will be suitable for the 1990's and beyond.

## 1.3 Basis of Alberta Comments

The contents of this document are based on extensive and on-going discussions with a wide variety of transportation users and carriers operating in Alberta.

In addition, various studies were conducted on some of the key proposals in the legislation pertaining to the rail and air modes. These studies included:

- Evaluation of Competitive Line Rates - Bill C-126: SDS and Associates.
- A Review of the Final-Offer-Arbitration Provisions of Bill C-126: Travacon Research.
- Comparison of Canadian and American Railway Regulation: R.L. Banks and Associates.
- Competitive Access and Shipper Protection in Canada and the United States: R.L. Banks and Associates.
- Proposed Changes to Federal Government Legislation in the Canadian Airline Industry: Perceptions of Northern Albertans: Deloitte, Haskins and Sells.

It is the nature of the legislative process that once enacted, the practical effects of new laws may be significantly different from anticipated effects. A relevant example is Section 278 of the current Railway Act which provides a formula for maximum rail rates. When this section was proposed, Alberta noted that the formula was impractical and that it would not provide an adequate maximum rate constraint. After the legislation passed, it became evident this was indeed the case. In light of this and similar experiences, Alberta has made detailed comments and offered many suggestions on Bill C-18 and C-19. The attention to detail in this submission is provided due to the concern expressed above, rather than because of disagreements with the principles or mechanisms proposed.

The body of the submission provides a short discussion of national transportation policy, followed by analyses of Bill C-18's proposals for the rail and air modes. The balance of the paper analyses the effects of this Bill and Bill C-19 on extraprovincial trucking, northern marine services, commodity pipelines, mergers and acquisitions, information requirements of transportation users and the National Transportation Agency. Finally a summary of the province's recommendations is found at the end of the submission. In an effort to assist the committee in its detailed review of the Bill, an appendix has been attached which presents Alberta's recommended amendments on a clause by clause basis.

## 2.0 NATIONAL TRANSPORTATION POLICY

The Government of Alberta believes that a more efficient, lower cost transportation system is vital to Alberta's continued prosperity, and that this goal can best be achieved by putting greater reliance on the transportation marketplace and less on regulation. In this regard, the emphasis on competitive forces in the proposed National Transportation Act is viewed very positively. Specific measures such as competitive line rates, which will expand the competitive interface between rail carriers, are also strongly supported by the Province.

The Government of Alberta believes that this legislation will not only benefit shippers but will also benefit carriers. Competitive pressures will cause carriers to find new and innovative methods to reduce costs, generate new traffic and protect revenue levels on existing traffic. Also with greater competitive carriers will work harder to maintain and improve service levels to their customers.

In addition to promoting competition, the Bill contains various measures to protect transportation users in circumstances where competition is weak or absent. Examples of these measures are final-offer-arbitration and regulation of air transportation for communities north of the demarcation line. This combination of competition and protection is an essential feature of the legislation and is vigorously supported by Alberta. Alberta views competition and protection as a package which can only operate effectively with both elements. If key competitive or protective measures are removed or weakened, this could seriously impair the effectiveness of this legislation.

A favourable change in the proposed legislation is the introduction of references to safety and regional economic development in the policy statement. Alberta concurs with these amendments, but recommends that the regional economic development clause be expanded to incorporate both parts of the 1985 agreement on this subject adopted at the Provincial Premiers meeting in Halifax. This would require the addition of a statement acknowledging that the commercial viability of transportation links must be balanced with regional economic development objectives, in order that the potential economic strengths of each region may be realized.

Multimodal transportation systems are going to become increasingly dominant in the transportation environment. Examples of this trend are the introduction of integrated container services combining the water and rail modes, and the growth of Alberta Intermodal Services Ltd. Even in the movement of bulk commodities a number of innovative rail/barge, pipeline/rail and truck/rail combinations have been developed. Multimodalism enables shippers to utilize the most efficient mode for each segment of the journey. The inherent advantages of multimodal transportation for many types of shipments, will contribute to the growing significance of such systems in the more competitive surroundings cultivated by the proposed legislation. Alberta believes the growth of multimodalism will be beneficial for the transportation community and should be recognized in the statement of transportation policy.

## 3.0 RAIL

### 3.1 Introduction

In the introductory part of this submission it has been stated that Alberta's support for Bill C-18 is based on the view that the legislation is a package to enhance competition where possible and to provide regulatory protection where necessary. This position is particularly applicable to Part III of the legislation pertaining to railway freight transportation. Alberta's interest in this part of the Bill arises from the dominant role which rail carriers play in the economic development of the province and the influence which they have on the competitiveness of the province's products in world markets.

## 1. Competition in Alberta

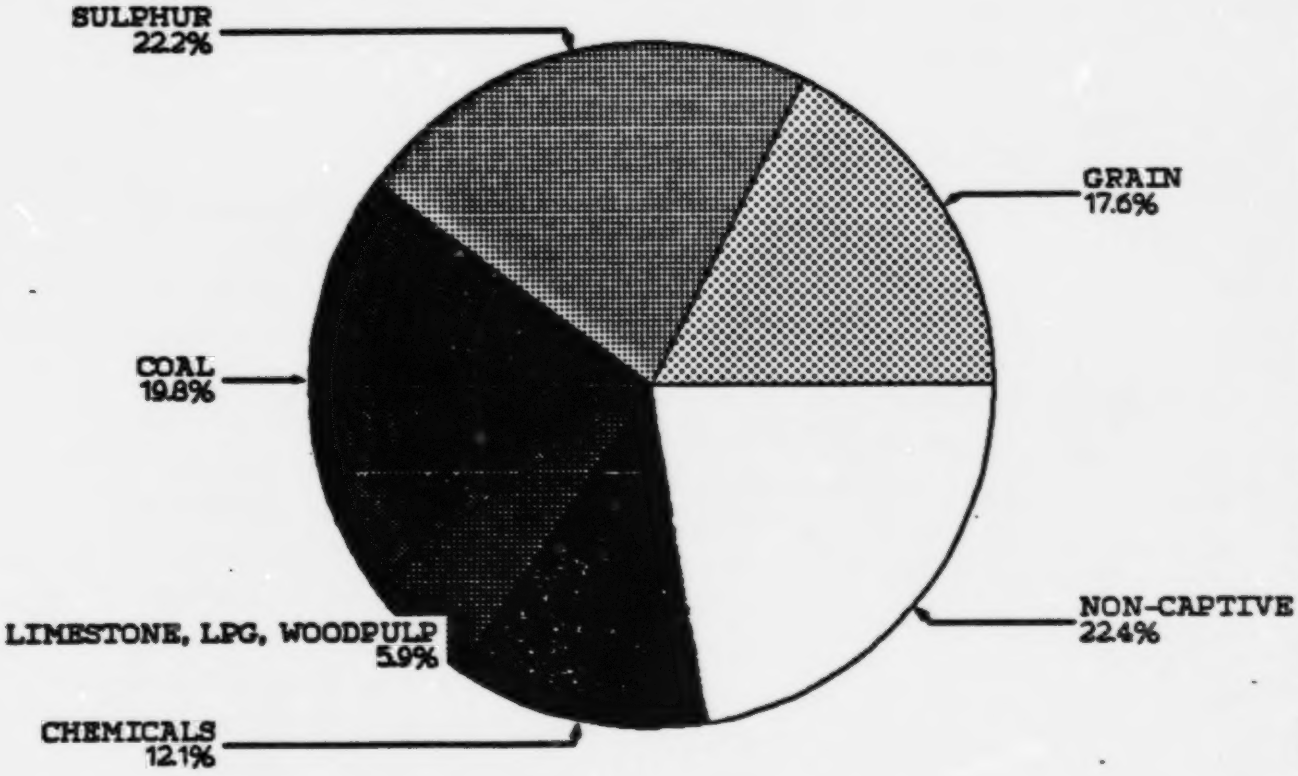
Railway operations are designed for the efficient movement of bulk, high volume commodities over longer distances. Alberta's remote and landlocked location and the nature of much of the province's export products makes rail the most effective means of accessing our distant markets. In 1985 Alberta generated 48 million tons of freight for Canada's two major railways, approximately 20% of their total business. Of this Alberta tonnage, almost 80% is made up of commodities which may be considered captive to the rail mode (Exhibit 1). With the concentration of CN Rail lines in the northern part of the province and CP Rail lines in the south, a large portion of these same commodities are also essentially captive to a single rail carrier. With only limited potential for competition between CN and CP, Alberta shippers, particularly those in the south, must have access to the U.S. railways if they are to be able to benefit from increased competition.

## 2. 1967 National Transportation Act

Alberta and indeed all of the western provinces have for years expressed the concern at the lack of competition being provided the railways from other modes and at the absence of competition between the railways themselves within the

EXHIBIT 1

## ALBERTA CAPTIVITY TO THE RAIL MODE
### PERCENT OF ALBERTA RAIL TONS LOADED - 1985



Source: Statistics Canada data to be published in catalogue 52-211.

Note: Commodities named are those considered by Alberta to be essentially captive based on distance and volumes to most common destinations.

region. This concern has been magnified by provisions of the 1967 National Transportation Act (NTA -1967) which neither encourages competition between rail carriers, nor provides effective recourse for rail shippers who may be adversely affected where competition does not occur.

The primary provision for offering some protection to rail users has been the Section 23 public interest appeal mechanism in the NTA-1967, and the captive shippers maximum rate section of the Railway Act. Experience with the current public interest provision has clearly demonstrated that the lengthy and involved procedures have rendered the process too costly for most shippers to use. The ineffectiveness of the maximum rate rule was apparent even before it was passed into law. In 1966, Alberta representatives provided to members of the Committee on Transport and Communications reviewing Bill C-231, very strong concerns that the specific formula being proposed as a means of determining a maximum rate was inappropriate and would not provide the necessary shipper protection. Time has proven this concern to be well founded.

## 3. The Freight Rate Burden

Early in 1985, Alberta Economic Development and Trade completed a "Burden Study" which examined the financial impact of railway freight rates on Alberta related rail carload freight traffic. During the Standing Committee on Transport's 1985 review of the white paper, Freedom to Move, Alberta provided the results of the burden study to demonstrate the need for economic regulatory reform of the transportation system and offer support for the principles of the federal paper. As the results of this study are important in understanding the basis for Alberta's strong support for the rail portion of the Bill and the emphasis placed on shipper protection, this paper bears repetition here.

The study examined rail carload freight traffic moving in and out of Alberta (excluding traffic to the U.S.) and compared the variable costs incurred by the railways in the haulage of this traffic with revenue received. The objective of the study was to determine the magnitude of the contribution of Alberta related traffic to railway constant costs, (referred to as the "burden") and compare this to the contribution earned on all traffic.

Based on 1982 data, the study concludes that Alberta related traffic which for the most part is captive to rail makes a proportionally large contribution to railway constant costs. The two major Canadian railways recovered from Alberta traffic, contribution to costs in an amount equal to 34% of the variable costs. By comparison, the total rail system in Canada had a contribution equal to 6% of their total variable costs (Exhibit 2). If non compensatory grain traffic were excluded, the traffic studied which constitutes 28% of system total traffic paid over 76% of the railway constant costs recovered in 1982.

## 4. The Railways and Market Access

The results of the Burden Study confirmed the basis for Alberta's concerns with the level of freight rates being assessed the province's commodities. A less rigorous analysis than the Burden Study illustrates that rail shippers have experienced rate increases greater than increases in railway costs over the past 13 years (Exhibit 3). Moreover, it can be observed that the rate increases on traffic considered captive greatly exceeded those on competitive traffic.

The differences between the railway cost index and the commodity rate changes indicate that productivity gains achieved by the railways over the years have not been shared with western shippers.

## EXHIBIT 2

### Alberta Burden Study Results - 1982

| | *Including Statutory Grain | | *Including Compensatory Grain | | *Excluding Grain | |
|---|---|---|---|---|---|---|
| | (1) Contribution Ratio | (2) Contribution ($Million) | (1) Contribution Ratio | (2) Contribution ($Million) | (1) Contribution Ratio | (2) Contribution ($Million) |
| Alberta: | | | | | | |
| Outbound | 1.16 | $103.9 | 1.42 | $280.2 | 1.58 | $236.1 |
| Inbound | 1.92 | 191.9 | 1.92 | 191.9 | 1.92 | 191.9 |
| Total: | 1.34 | 295.8 | 1.54 | 472.1 | 1.70 | 428.0 |
| Canadian Total: | 1.06 | 269.2 | 1.16 | 684.8 | 1.16 | 560.7 |

**Notes:**

* Revenues and costs were calculated for three scenarios:

- Statutory Grain: Calculations were based on the actual occurrences in the rail system where grain was transported at non-compensatory rates.
- Including Compensatory Grain: Calculations assume grain revenues are determined in a post WGTA environment where railways receive revenues which cover variable costs as defined by Cost Order R-6313 and make a 20% contribution to constant costs.
- Excluding Grain: Statutory grain revenue and costs are excluded.

(1) Contribution Ratio = Revenue divided by long-run variable costs.

(2) Contribution = Revenue minus long-run variable costs.

## EXHIBIT 3

### Selected Commodities Moving Into and Out of Alberta

### 1973 - 1986

### A. Rail Rate Index

| Commodity | Origin | Destination | 1986 Index (Index of 1973 as base year =100) |
|---|---|---|---|
| Captive: | | | |
| Outbound | | | |
| Coal | Luscar, AB | North Vancouver, BC | 474 |
| LPG | Homeglen, AB | Westridge, BC | 725 |
| Lumber | Whitecourt, AB | Toronto, ON | 277 |
| Sulphur | East Crossfield, AB | North Vancouver, BC | 510 |
| Competitive: | | | |
| Outbound | | | |
| Piggyback-Plan II | Calgary, AB | Winnipeg, MB | 355 |
| Inbound | | | |
| Automobiles | Windsor, ON | Red Deer, AB | 270 |
| Canned Goods | Toronto, ON | Edmonton, AB | 230 |
| Packaged Foodstuffs | Montreal, PQ | Calgary, AB | 217 |
| General Merchandise | Winnipeg, MB | Edmonton, AB | 403 |
| Iron and Steel Articles | Hamilton, ON | Edmonton, AB | 244 |
| Paper and Paper Articles | Vancouver, BC | Edmonton, AB | 282 |

### B. Rail Cost and Price Indexes

| | |
|---|---|
| Price Index: 1 | 366 |
| Cost Index: 2 | 232 |

**Notes:**

1 The Price Index was constructed using the approved CTC Price Indices for the year concerned. Each input index was weighted by the portion of that input used in moving WGTA grain.

2 The Cost Index is the change in Total Railway Expenses per Gross Ton Mile. This includes depreciation, taxes and fixed charges. Passenger costs incurred by the railways were included but VIA charges to the railways after 1979 were removed together with the appropriate Gross Ton Miles.

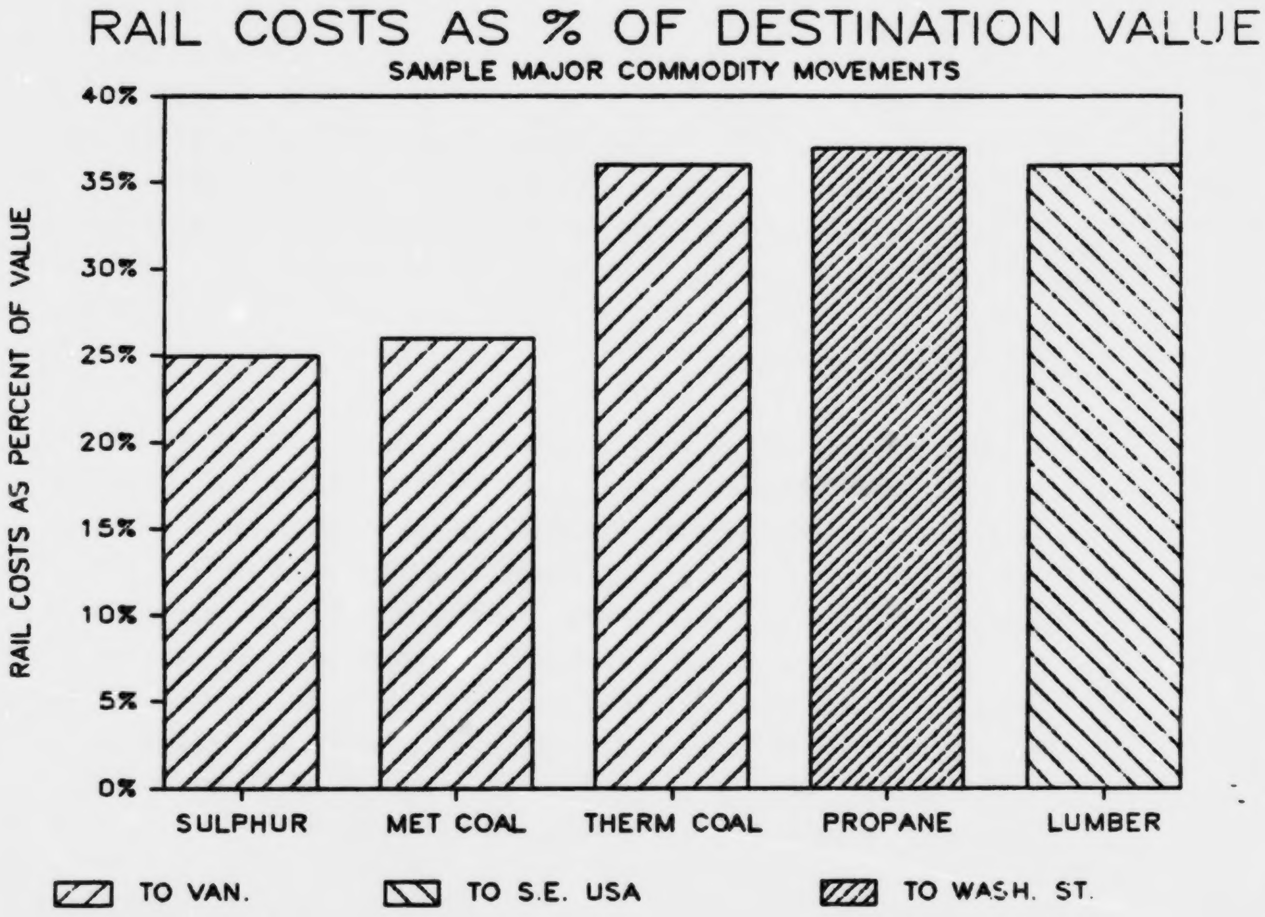
With transportation costs comprising such a large portion of the delivered price of Western Canadian exports (Exhibit 4) it is imperative that shippers are able to share in future productivity gains. In a marketplace where price sensitivity is increasing, even a minor adjustment in transport costs can mean the difference as to whether or not a shipper will be competitive in a market. The full range of provisions contained in Bill C-18 are required in order for the shipper to have sufficient bargaining leverage to share in the benefits of productivity gains.

### 3.2 Support for Package

Alberta believes the package of provisions in Part III of Bill C-18 is both timely and appropriate to the creation of the transportation environment so necessary for Canada. As the above discussions shows the 1967 National Transportation Act as it pertains to rail is woefully inadequate for the 1980's and beyond. Alberta believes that the proposed package of provisions to encourage inter-railway competition wherever possible and to provide user protection where it is not, will serve both users and carriers well. In fact these provisions may well be critical to the survival of Alberta's bulk commodity shippers in the international marketplace.

Effective shipper protection was important in 1967 but it is imperative in 1987. If any of the provisions to protect shippers or expand the competitive interface between the carriers contained in Bill C-18 are substantially altered or fail to work as intended, western resource shippers could be placed in a worse position than they are now vis-a-vis the railways. This would occur because of other provisions of Bill C-18 which allow confidential contracts and prevent collective rate making will increase the carriers ability to discriminate in their pricing. Shippers without access to effective provisions to expand the sphere of intra-railway competition (competitive line rates, expanded interswitching, terminal running

EXHIBIT 4



Source: 1986 Industry Records

rights) or dispute resolving mechanisms (arbitration and public interest appeals) will not have the negotiating leverage to protect their competitive position. The Bill as it is now written contains provisions which on one hand give the railways greater freedom to price while on the other hand give increased bargaining leverage to the shippers. This represents in Alberta's view a balance which must be maintained in tact. To ensure this balance is achieved in practice the various provisions of the Bill must work effectively. This is the primary objective of the recommendations contained herein.

For the reasons given earlier Alberta believes it is important to consider the detail of the various provisions to ensure that they have the desired results. In the ensuing sections on railway transport in this paper, Alberta has made a number of recommendations for change to some of the various provisions. These recommendations should not be viewed as a lack of support for the provisions themselves, but as a means of making their practical application as effective as possible.

## 3.3 Enhancing Competition

### 1. Confidential Contracts

Many Alberta shippers who serve the U.S. markets have acknowledged the benefits that the Staggers Rail Act of 1980 has provided shippers in that country. Confidential contracting allows the railways more flexibility to offer rates and services designed to meet the needs of shippers and facilitates long term planning by the railways and rail users. Both Canadian shippers and carriers are expected to benefit from confidential contracts.

### 2. Elimination of Collective Pricing

Bill C-18 repeals Section 279 of the Railway Act which allows Canadian railways to set common rail freight rates. Elimination of this provision will, like confidential contracting, allow carriers and some shippers greater flexibility in arranging transportation rates and services. It is important to recognize, however, that the railway industry in Canada is dominated by two large national carriers and hence is far from the classical competitive market where buyers of transportation services can compare rates and services offered by several sellers. Therefore, the elimination of collective pricing does not guarantee that the carriers in this duopoly situation will actively compete. In addition, many shippers who are located at points served by only a single rail carrier will not benefit from the elimination of collecting pricing. Therefore, it is vital that other provisions of the legislation package to offer some protection to such shippers are concurrently implemented.

### 3. Competitive Line Rates

The competitive line rate (CLR) provision is a key ingredient of the new legislative package and represents a major initiative to providing competitive alternatives for the shipper who is captive to a single rail carrier. It is the one provision that addresses the plight of the remote captive shipper. Without access to the CLR, a shipper in this situation would become the target of railway attempts to make up for revenues reduced through other new provisions such as confidential contracts and the removal of collectively set freight rates.

Alberta believes the CLR will play an important role in improving shipper access to domestic, offshore and U.S. markets in two ways. First, the existence of the CLR mechanism in legislation will provide shippers who lack transportation alternatives with additional bargaining leverage in negotiations with carriers for rates and service. Second, the mechanism will provide the shipper with the ability to select lower cost routing options for moving his product to market.

Alberta views the intent of the CLR as an alternative that the shipper uses in the negotiation process only with a great deal of weight given to its consequences relative to other services he will want from his railway in the future. Alberta does not believe the CLR as an avenue of recourse would be lightly or constantly be employed. In this way, shippers will be provided the opportunity of reducing their transport costs and the carrier involved will retain the traffic albeit at a lower revenue level but possibly at lower cost as well. To make the competitive line rate provision an effective bargaining tool for shippers, it is important that sufficient attention be given to the details of the workings of the mechanism so as to offer a realistic option for shippers. With this in mind, Alberta does have some recommendations which we believe will ensure that the actual CLR mechanism can be effectively implemented.

Under the CLR concept, the shipper must identify the nearest interchange in the general direction of the movement when he is designating the route from origin to destination. Both the local carrier's behavior and the level of service obtained by the shipper will be influenced by the interchange location. In general, if the distance for the CLR is relatively short, the local carrier will be less inclined to view the CLR positively. In addition, the service level of the connecting carrier at the nearest interchange might not be appropriate from either the shipper's or the carrier's perspective. For shippers located near various points of interchange providing options for designated routings, the requirement to use the nearest interchange may unnecessarily restrict rate negotiations with the local and connecting carriers.

Alberta believes that removing the requirement for use of the nearest interchange and allowing for a designated interchange by the shipper when the designated route is given, will enhance the possibility of positive negotiations between the shipper and local carrier with respect to service considerations and carrier revenue needs.

The accompanying appendix to this submission includes additional Alberta recommendations for addressing some other technical problems identified in specific sections of the competitive line rate provision. The issues addressed include potential elimination of U.S. routing options, distance over which the CLR may apply, use of multiple CLR's and the level of interswitching rate to be employed in the calculation.

## 4. Expanded Interswitching

There is little disagreement across Canada that current regulations pertaining to the interswitching of carload traffic are long overdue for revisions. Change to current interswitching regulations are required to accommodate industrial expansion that has occurred at centres across Canada and to provide carriers with sufficient compensation for the service provided.

The provisions of Bill C-18 to expand the interswitching area at any interchange point to 30 kilometres (approximately 18 miles) from the present 4 miles will most certainly provide many more shippers with increased access to a competing line haul carrier. While Alberta strongly supports expanded interswitching limits, it does have the concern that setting a new limit based strictly on a mileage will create an environment that is just as inflexible as the current limit, and could create the same problems in the future as we are facing today.

In the course of the Canadian Transport Commission review of interswitching regulations and in the Alberta November 1985 submission to the Standing Committee on Transport concerning Freedom to Move, the Province advanced a proposal for expanding interswitching which is believed will not only be flexible in meeting shipper needs but will also be easily accommodated in railway operating procedures. Alberta proposed that the new interswitching limits be based on railway "switching limits". This is a geographic area wherein terminal switching services are provided by a line haul carrier to its own customers. The switching limit concept has no strict mileage identification but is based on railway operating procedures which are adjusted when necessary to meet industrial expansion and customer service needs. For these locations where there are no switching limits a base mileage needs to be specified.

Alberta believes that incorporation of the switching limit application in concert with the 30 kilometer interswitching limit proposed in Bill C-18 will meet the current need for expansion of intramodal competition and provide for more flexibility in the future. Alberta recommends that the provision to increase interswitching be based on a minimum of 30 kilometers or railway switching limits, whichever is greater.

The establishment of a larger interswitching area is a part of the underlying principle of the new legislation to increase intramodal competition. The need for more appropriate compensation to the interswitching carrier is also recognized in the legislation and is supported by Alberta.

In most cases the railways currently absorb 100% of interswitching charges on both competitive and non-competitive carload traffic and Alberta believes that this practice should be continued. No portion of interswitching charges should be directly assessed to the shipper. With this provision, the interswitching rate will become primarily a consideration strictly between the carriers. Therefore, it is recommended that the level of such rates be negotiated and set between the carriers themselves. Because the interswitching rate is also to be one of the factors used in the construction of a competitive line rate, it is also recommended that the carrier set rate be subject to three qualifications. First, interswitching rates at whatever level should be standardized at all locations across Canada. Second, the actual rate level should be subject to National Transportation Agency approval to ensure it will not create a barrier to a competitive line rate application. Finally, the interswitching rate in so far as it is used for competitive line rates reflects the economies of moving various numbers of cars.

As a final comment concerning the interswitching rate and its use in constructing a competitive line rate, Alberta believes that to ensure the competitive line rate mechanism is made available to shippers on the day the new legislation comes into force, the National Transportation Agency must set an interim interswitching tariff to apply until the carrier-set rate is established and approved.

## 5. Terminal Running Rights

The provision of Bill C-18 to allow for running rights for distances of up to 50 kilometers of one railway on the line of another does create the opportunity for competitive services to a shipper without costly duplication of railway infrastructure. This concept has particular merit for those lines where large traffic volumes exist. There are three locations in Alberta where terminal running rights could prove very beneficial; Fort Saskatchewan, Joffre, and West Carseland. Terminal running rights, as a carrier initiated activity, allows the railways the opportunity to pursue new revenue sources.

## 3.4 Dispute Resolution

### 1. Final-Offer Arbitration

Alberta believes the final-offer arbitration concept as provided in Bill C-18 is one of the cornerstones of the new legislation now under review. Alberta has pressed for years for the inclusion in legislation of such a mechanism with a reparations provision which would provide a means of resolving a dispute between a shipper and carrier without government intervention. In Alberta's view the final offer arbitration is an expeditious process which is envoked when the shipper and carrier are unable to reach a negotiated settlement. It is a last resort. As such the arbitrator would be presented with the final offers of both parties along with supporting documentation and asked to make a determination. Anything given to the arbitrator has to have been tabled between the parties during the course of their negotiations. Allowing new information to be submitted during the arbitration would prolong the process and encourage parties to hold back information from the negotiations. Hearings with witnesses and cross examination are not contemplated in order to avoid protracted arbitrations. However, the arbitrator should have the ability to seek clarification of issues.

Alberta views the arbitration process as a legislative provision which will place shippers in a more equitable bargaining position with carriers. If the process itself is effective, the carriers will want to negotiate with shippers and visa versa. If the process is not effective, leverage in any negotiations will remain with the carriers. With this in mind, Alberta has some recommendations concerning the final-offer provisions of Bill C-18 which it believes will make the process more effective for shippers. There are four basic principles upon which our recommendations are based:

i) Final-offer arbitration must not be employed until the process of negotiation has been exhausted.
ii) Access to final-offer arbitration must not be restricted.
iii) The arbitration process should focus on the private commercial interests of a dispute.
iv) Even after the arbitration process has been initiated, the wishes of the disputing parties should be paramount.

Alberta's major comments relate to the question of which shippers may access the final-offer arbitration process and to the factors which the arbitrator is to consider when making a decision. Additional technical recommendations are also included in the accompanying appendix. It should also be noted that while the final-offer arbitration process may be used in shipper disputes with carriers of modes other than rail, Alberta sees the primary application of arbitration occurring where an impasse occurs in negotiations between a shipper and a railway.

## Access to Arbitration

Final-offer arbitration as proposed in Freedom to Move and brought forth in concept in Bill C-18 is termed as a dispute-resolving mechanism to provide all parties with a fair and timely resolution. Alberta strongly supports the arbitration concept on this basis and contends that where a dispute is of a private or narrow interest, the shipper involved should not be denied access to the process because of the amount of dollars involved from the traffic at issue, the destination or the nature of the traffic at issue, or the physical presence of other carriers in proximity to the shipper.

Alberta is concerned that the legislation permits the National Transportation Agency to refer a shipper request to the "public interest" appeal provision contained in the legislation. Large shippers may be denied access to final-offer arbitration under this provision. A railway may argue in a dispute that since the shipper provides a high level of revenue which may be significantly reduced by arbitration, its long term viability as a railway could be jeopardized. As such the railway may further argue that it is a matter of public interest since service might be denied or degraded to other shippers. No one shipper whether he be large or small can bear responsibility for railway viability. By example, a rate dispute will involve only a part of an overall rate (i.e. - an amount of increase to a previous rate) and this amount even for a large shipper, will represent only a very small portion of a railway's total revenues. Railway revenue is a system problem and should be irrelevant when a shipper and a carrier are looking for resolution of a rate dispute. Alberta believes the legislation must be revised so as to eliminate the potential for the National Transportation Agency to refer an application for arbitration to the public interest appeal provision, thereby denying a shipper recourse through the more expeditious arbitration process.

It has also been suggested by some that where there are alternate carriers or modes available to a shipper, that shipper should not have access to final offer arbritration. Alberta believes that the mere existence of these alternatives does not always mean that they will be effective. More specifically, even where there is potential for service from the two major rail carriers, it does not mean that the two railways, as a duopoly, will actively compete for the traffic at issue. The effectiveness of any shipper option for transportation should be a factor to be considered by the arbitrator in each specific case. As such Alberta recommends that this should be included in the specific list of considerations for the arbitrator as provided in Section 51 of Bill C-18.

The major Canadian railways are recommending restriction of access to arbitration so that shipments based on through rail rates between Canada and the U.S. would not be the subject of an arbitration proceeding. The claim is that the Canadian carriers would bear the full impact of any decision against them and that there would be no recourse on the connecting American carriers. Alberta believes that the Canadian carrier, as an originating carrier, must ensure that a through rate arranged with connecting U.S. railways meets the needs of this customer. If this does not occur, and an ultimate arbitration decision is unfavourable to the Canadian railway, that railway has the option of pursuing an adjustment in divisions with the connecting U.S. carrier. Alternatively, the Canadian railway could negotiate with the U.S. carrier for an adjustment to the total through rates. Prior to the 1980 Staggers Act, such adjustments were a common occurrence between Canadian and American railways. Shippers denied arbitration on a through rate could seek arbitration on a combination rate over the border. This would be undesirable as through rates between Canada and the U.S. have traditionally existed at a lower level than any combination of rates over the border. Their preservation is in the best interests of shippers and carriers alike in that they are a valuable tool for conducting transportation business. Alberta therefore believes they should be subject to final-offer arbitration where the shipper requests it.

## Arbitration Factors

A second concern of Alberta's relates to the specific factors which an arbitrator may consider when making a decision. Placement of these factors or criteria in legislation is appropriate and are a very fundamental part of the arbitration provision. The factors will be a key to setting guidelines, particularly for the smaller and/or less experienced shipper in actual negotiations with carriers and could serve to improve that process so that actual need to use arbitration will be reduced. If the arbitration process is to be expedient and is not to replace negotiations, no information can be given to the arbitrator which has not been previously exchanged between the parties. It is therefore vital that these factors be known, be clear and be as relevant as possible so as to allow the most effective arbitration process.

One of the factors contained in the arbitration sections of Bill C-18 refers to the "preservation of the economic viability of the shipper and carrier". As currently worded, the factor is very broad and potentially harmful to the process. For example, under any condition where the rail carrier is less than revenue adequate, one could interpret this criterion as saying that the arbitrator must accept the railway position since the railway cannot be economically viable in the long-term without revenue adequacy. Conversely, acceptance of a lower rate proposed by a shipper could be considered damaging to the carrier's economic viability.

A second problem is that the concept of railway viability can present significant measurement difficulties. Such difficulties are well illustrated by the problems recently experienced in the United States in defining and measuring railroad revenue adequacy. Currently, under the American method of measurement, no U.S. railway including the Burlington Northern is revenue adequate.

A third problem with the concept of railway viability is that it is heavily influenced by factors having nothing to do with the provision of service to an individual shipper. Even the largest rail shippers account individually for only a very small percentage of overall railway revenues and costs, and use only a small portion of the overall railway facility.

Alberta believes that the economic needs of the railways are adequately covered in other factors to be considered by the arbitrator, and that it would be improper to further say that the overall economic viability of the railway should be considered.

On the other hand, shipper viability is also generally dependent on factors which extend far beyond the production of any traffic involved in a specific movement at issue. Alberta believes the focus on the shipper economic concerns in arbitration should relate to the specific product in question and the specific market involved. Therefore the factor of shipper viability should relate only to the specific movement under consideration.

Alberta recommends that the reference to carrier viability as a factor for consideration by an arbitrator be deleted and shipper viability be qualified in the manner shown at the end of this section and in the attached appendix.

While the provisions concerning arbitration do not provide transportation alternatives as a specific factor to be considered by the arbitrator, the legislation does indicate that an arbitrator "shall have regard to whether there is available to the shipper an alternative effective, adequate and competitive means of transporting the goods to which the matter relates." Alberta believes this consideration is inappropriately placed in the preamble of Section 51 which lists those factors which an arbitrator shall consider. As cited earlier in the section concerning access to the arbitration process, Alberta believes the physical presence of transportation alternatives should not be used as a means of prejudging whether a dispute should be heard. Nor should it in itself be the overriding influence on any or all other factors to be considered by the arbitrator.

Alberta believes the availability of an "alternative, effective, adequate and competitive means of transportation" should itself be one of the various factors listed for the arbitrator to consider on a case by case basis. This is appropriate in that conditions relating to movements of a shipper's products to different markets will vary. For some movements, the two major rail carriers may choose not to compete for a particular movement or, in attempting to meet competition a carrier may err in determining what an appropriate rate and service package might be for the shipper.

Alberta believes that the factors to be considered by an arbitrator are an intergral part of an effective arbitration mechanism and should be expressed as follows:

(a) changes in the cost of providing the transportation service to which the matters relates, including consideration of the impact of efficiencies instituted in provision of this service either by the shipper or the carrier;

(b) the contribution to constant costs to the carrier from the transportation of the goods to which the matter relates in comparison with the carrier's contribution to constant costs from the transportation of other goods;

(c) the ability of the shipper to compete in respect of the traffic in question, having regard to its long term economic costs and to the national and international market conditions that pertain to the goods to which the matter relates;

(d) the quality of the carrier's transportation service to which the matter relates;

(e) the shipping practices of the shipper in connection with the transportation service to which the matter relates, and the effect of those practices on the carrier's operations; and

(f) whether there is available to the shipper an alternative, effective, adequate and competitive means of transporting the goods to which the matter relates.

Specific recommendations to address the issues discussed above and other technical issues are contained in the accompanying appendix with clause by clause comments.

## 2. Public Interest Appeal

Alberta recognizes the need to provide an appeal process to address disputes involving an issue of more than a narrow interest between a shipper and carrier. Alberta has consistently maintained that current procedures under Section 23 of the 1967 National Transportation Act are too lengthy and costly to be on effective avenue of appeal for shippers. Provisions of Bill C-18 to expedite the process, to provide reparations on rates, and to open the process to shippers served by one carrier of a single mode are all positive changes to this process. Because the process is one to deal with issues in the public interest, Alberta does recommend that public bodies, such as a provincial government do have the ability to ask the National Transportation Agency to initiate an investigation.

## 3. Mediation

Mediation has the potential of being a very valuable service to shippers and carriers. The service could encourage the negotiation process and reduce the need for use of the more formal dispute resolution mechanisms of final-offer arbitration and public interest appeals. It has been suggested that mediation might be employed as a prerequisite to the final-offer arbitration process. Alberta would not agree with such an arrangement and believes use of mediation not be an obligatory process, but remain a voluntary option available to the parties.

As has been stated in various parts of this submission, Alberta's very strong support for Bill C-18 is based on the view that the legislation is a package which is designed to enhance competition wherever possible and provide protection wherever necessary. The package of provisions is delicately and deliberately balanced to address the varying conditions and needs that exist across Canada. Removal of any individual components of the package will not only upset this delicate balance, but will also have an adverse impact on the effectiveness of the other complementary provisions.

## 3.5 Intermediate Agencies and Shippers

Alberta has always had the concern that smaller or medium sized shippers have not enjoyed appropriate bargaining leverage with railways when negotiating for rates and service. Alberta has undertaken various initiatives to allow individual shippers to take advantage of situations where the common transportation needs of several shippers can be used to obtain better rate and service levels from carriers through intermediate agencies.

To illustrate, the province of Alberta has encouraged and aided in the formation of an association for Alberta lumber producers which could negotiate on transportation matters for its members with carriers. In addition, Alberta established Alberta Intermodal Services (AIS) to provide shippers with lower transportation costs on container shipments between Alberta and British Columbia. Individual shippers can take advantage of lower rates AIS has negotiated with CP Rail on the basis of round trip rates and annual volume guarantees.

Alberta believes that it is important to ensure that organizations such as AIS, industry associations or other intermediate agencies such as brokers, freight forwarders and pool car operators are viewed as "shippers" under the new Act so as they may access the various provisions provided in the legislation. This recognization is required to ensure that the shippers using such agencies will be provided with the opportunity of realizing the potential benefits of Bill C-18.

## 3.6 Rail Information Requirements

### Need

Bill C-18 represents a significant change in transportation policy in Canada and when enacted will alter in a major way the manner in which users of transportation and carriers do business. The primary purpose of the new legislation is to increase reliance on competition wherever possible. Information becomes the basis for allowing the economic efficiency and competitiveness contemplated by the legislation to occur. In addition, specific regulatory provisions in the new legislation require the maintenance and/or development of additional data if they are to function as intended. Similar information will also be required for the annual and four year reviews of the legislation provided for in Bill C-18.

A fundamental ingredient of an efficiently functioning marketplace is relevant and timely market information. In a competitive environment, buyers of transportation services can acquire much of this information by comparing rates and services offered by several sellers. However, the amount and quality of information available tends to decrease as the number of competitors decreases. The market for railway services in Canada is essentially a duopoly. In other modes in Canada - ie. air and trucking, information is much more readily available due to the numerous different carriers available. As a result it is necessary to ensure that there is adequate information available in the rail transportation marketplace to achieve a competitive environment.

Public disclosure of general rail cost data could serve as a proxy for competitive price information to fill the void inherent in a market dominated by two national companies and to counteract the reduction in reliable data which will tend to accompany increased use of confidential contracts. This proposal would provide Canadian shippers with the same type of information as is available on U.S. railways. Alberta therefore recommends that the new Agency be given the power to collect and publish data and information it determines to be necessary for the effective implementation of the Act.

Similar disclosure requirements of shipper costs are unnecessary since in almost all cases there are many competitors and information needs are satisfied by the market. Cost disclosure would also provide shippers with the opportunity to be more knowledgeable and effective negotiators, thereby placing them in a more equitable position relative to the carriers.

## Railway Cost Index

In addition to railway cost data, it is significant to note that publication of a railway cost index has been a requirement in the United States for a number of years. One method of disclosure provided in the U.S. is the Rail Cost Adjustment Factor (RCAF). The process involves calculations of a railway cost index by the Association of American Railroads which are then published on a quarterly basis. The index was mandated in the Staggers Rail Act and is prepared under Interstate Commerce Commission rules. Amongst its many uses is its often use as a reference point in confidential contracts which contain an annual escalation clause.

Given the allowance of confidential contracts and the advent of multiple year agreements, rail cost indices are likely to become a more common feature in rate negotiations in Canada. At present shippers do not have access to sufficient rail cost data to enable them to negotiate indices on an equitable basis with the carriers. They must, therefore, accept railway computed indices without supporting documentation or knowledge of the methodology used.

Rail cost data will also become an important factor the final-offer arbitration mechanism.
By the arbitration provisions of Bill C-18, two of the factors which an arbitrator shall consider when rendering a decision relate to railway costs. Shippers must have access to required information during the course of their negotiations to ensure that the arbitration process is both equitable and expeditious.

In the fall of 1986, Alberta Economic Development and Trade contracted R.L. Banks and Associates of Washington, D.C. to undertake a comparison of the rail provisions of the original Bill C-126 with provisions of the U.S. Staggers Bail Act. A major recommendation provided on pages 27 and 28 of the consultant's report is as follows:

> "Indices of railway costs, material prices, wage rates and other, now computed by RTC (Railway Transport Committee) should also be fully disclosed and described to the public.
>
> For some years, RTC staff has computed at intervals, indices showing changes in the costs experienced by CN and CP Rail, separately. Presumably, the Agency would continue the practice. These indices are treated as though they were proprietary information, even though their computation is at public expense and their primary use has been to provide an underpinning for freight rate increases.
>
> The introduction of confidential contracts including rate confidentiality serves to exacerbate the need for disclosure of these indices, because transportation contracts are not necessarily limited to single movements of freight at or shortly after contract consummation, they frequently relate to repetitive movements recurring over extended periods, in some cases over several years duration. In those situations, contracts provide not only for a rate movement inception, but also for rate adjustment at periodic intervals to reflect increases (and

> decreases) in railway operating costs, sometimes with weight given to enhancement in railway productivity over time. Such contractual arrangements are typically termed "escalation clauses," and their rationale is to recognize that railways, like other enterprises, must have rate relief from inflationary pressures if they are to remain viable.
>
> If long term transportation contracts are to be equitable, such relief must not only be forthcoming, but its quantitative justification must be publicized and acceptable to the shipping community."

Alberta strongly believes that the publication of a railway cost index at regular intervals is required for the new legislation to function as intended. Alberta recommends that Bill C-18 be amended to provide for the calculation and public disclosure of such an index.

## Development of Costing Guidelines

Even without Bill C-18 there has been a growing need to review railway costing procedures. This need is greatly magnified by the many provisions in the new legislation which require railway cost determinations.

In past, cost reviews have been focused on the analysis of individual railway cost components to determine their degree of variability with traffic. Another review of this nature is not required. Rather the need is for a review of cost components to establish which are relevant for each of the various end uses. For instance, cost of capital is not always relevant for costing backhaul traffic movements in a minimum rate determination.

Such a review should not be constrained by predetermined statements in the legislation of the relevance or irrelevance of various costs. Section 348 amends the old cost determinations sections in the Railway Act but retains the restrictive convenants. In the U.S. a similar need was identified in the Staggers Act and the Railway

Accounting Principles Board was established to conduct such a review as the one which is suggested here.

The Government of Alberta recommends that costing procedures relative to the various end uses be reviewed as soon as possible. Such a review should be modelled on the process used by the Railway Accounting Principles Board.

On the provision that a costing review is undertaken quickly, Alberta also recommends that the specific costing requirements such as those contained in the minimum rate rule (Section 112) and the determination of actual loss for a rail line (Section 57) should be eliminated.

## Availability of Information for Governments

Under provisions of Bill C-18 and the Railway Act provincial governments may secure confidential railway costing data. This data serves as valuable information in various analysis of transportation issues undertaken by the provinces. Often provincial governments employ consultants to conduct these various analysis or supplement its own employees in specific projects which involve use of such confidential railway data. Alberta believes it important that the legislation be clarified so as where a government has obtained information and agreed to treat that information as confidential, a consultant in the employ of that government may use the information under the same conditions.

## Tariff Information

In the new transportation enviornment created by Bill C-18, certain shippers will benefit through their improved competitive positions and therefore their improved bargaining leverage with carriers. Confidential contracts will become an important part of this environment. However, not all shippers will have equal negotiating leverage and many will continue to require a basis of pricing information from which to work in dealing with the railways. In the present environment, this basic information is comprised of three essential elements. These include published tariffs, a freight classification, and class rates. To ensure that shippers who do not shift to confidential contracts have at least the same information base as they do now, Alberta recommends that

1) A system of tariffs be maintained published and available for all.
2) Special arrangements tariffs continue to be published.
3) The Canadian Freight Classification, tariffs of class rates and a tariff index should be maintained.

## 3.7 Rail Line Rationalization and Subsidy

Dealing with the issue of branch line rationalization requires a balancing of the needs of the railways to reduce costs and the needs of shippers for access to a low cost efficient transportation system. To individuals, companies, and municipalities on railway branch lines, these lines have been viewed as an important part of the basic transportation infrastructure serving them. The declaration of a protected branch line network in the west is testimony to this. However, there are signs of a growing realization in the grain sector that some branch line rationalization is necessary.

Behind this change in attitude toward rationalization is the decline in grain prices and additional transport costs under the Western Grain Transportation Act. The recent rapid decline in grain prices has heighted awareness of the need to minimize distribution costs and to maximize revenues at the farm gate. Under the Western Grain Transportation Act all grain dependent lines are included in the cost base. As a result, any savings resulting from abandonment would accrue to the farmer. In addition, the work being done on off-track elevators, commercial trucking, and short line railways has shown farmers that there are alternative and potentially lower cost options available to them.

The interest in branch line rationalization extends beyond the grain sector to other shippers; particularly those which are captive to rail transport. These shippers realize that they bear the cost burden of excess rail capacity and higher system operating costs.

The Government of Alberta believes that Bill C-18 has the necessary components for a rail line abandonment and subsidy process which balances the public interest with the railways' desire to reduce their cost. However some amendments are required in order for the process to be appropriate for the situation in western Canada.

## Transitional Funding

By far the single most important aspect of the proposed abandonment process is the provision for transitional funding contained in Section 175 of the Bill. However, such funding is considered after the abandonment decision rather than as part of the abandonment process. By providing for negotiation of transitional funding as part of the abandonment process, affected parties would have a third option to a proposed abandonment. The process as now envisioned provides that a person faced with a notification of intent to abandon a rail line (S.160) has two choices; accept or oppose the application. By incorporating into Section 161 the opportunity to negotiate transitional funding those who might otherwise oppose the abandonment because it adversely affects them, would have a reasonable alternative that could be less costly for all parties.

In the case of western branch lines, the opportunity to negotiate for transitional funding is of primary importance. For those rail lines on the prairies included in the branch line prohibition order, the protection must be removed by order-in-council before an application to abandon the line can be made. Also, under the Western Grain Transportation Act grain rates only vary by distance and any savings derived from the abandonment accrue equally to all shippers. Consequently, grain shippers unable to offset the higher cost of delivering to an alternate point have little incentive to agree to the loss of local rail service. It is therefore essential that transitional funding be made part of the abandonment process.

While the primary source of transitional funding for the loss of rail service should be from the funds controlled by the Western Grain Transportation Act (WGTA), these funds need to be supplemented. In a number of cases there are non-grain users on the rail line and there are often impacts on local municipalities and provinces. Section 175 recognizes such negative impacts and the need to compensate persons and public bodies adversely affected by an abandonment. However, Section 175 precludes its application to grain dependent branch lines. The Government of Alberta strongly recommends that this exclusion of grain dependent lines be removed. Furthermore, with rail lines in western Canada protected to the year 2000, those adversely affected by an abandonment should be entitled to transitional funding over the same time period. This, along with making transitional funding an option to line retention, would provide sufficient flexibility to allow the development of an abandonment process which meets the changing needs of western Canada. Any additional funding required to make the treatment of prairie lines comparable to lines in the rest of Canada is justified on the grounds that the Western Grain Transportation Act has transferred future cost responsibility for grain dependent lines to farmers. The cost of this additional funding to supplement WGTA funds is expected to be very small relative to the costs of subsidizing rail lines in other parts of Canada.

## Short Line Railways

An option to abandonments in some special cases are short line railways. Alberta is encouraged to see the steps taken in Bill C-18 to facilitate their establishment. The power of the Agency under this Bill to establish a selling price for the line, to prescribe rate divisions, and to ensure service at interconnecting points is very important to successfully encouraging short line railways. The requirement that these railways be federally incorporated and remain subject to the jurisdiction of Parliament is problematic and could be an unnecessary disincentive. In many cases the economics of a short line require labour and operating practices which are unique to the area being served. The Government of Alberta recommends that Bill C-18 be amended to give short line operators greater flexibility on how they organize and operate their services. To accomplish this the requirement that a short line operator must be a federally incorporated railway company should be dropped and the mandatory adherence to "any other Act of Parliament" should be deleted. (Section 158(4) and 174(6)(b)). For reasons given above, a railway which is set up under the provisions in Bill C-18 should continue to be bound by the new National Transportation Act.

Bill C-18 appears to contemplate short line railways only as an alternative to abandonment. This ignores the potential savings which could be achieved by having a rail line which has been retained in the public interest operated as a short line rather than by CN or CP. Therefore, the Government of Alberta recommends that the Agency be given the responsibility to minimize subsidy costs by expanding the scope of the Agency's duties under Section 173(1). Consequential to this change would be a change to the subsidy sections (Section 178(3) ) to permit payment to short line railways. Such compensation should include the cost to establish the alternate service.

## Rail Lines versus Branch Lines

Bill C-18 allows for the sale and abandonment of rail lines but does not provide for subsidies or transitional funding. The latter two compensation provisions are only available on branch lines. The Government of Alberta believes that all lines should be treated the same. Certainly there can be no difference in the needs for transitional funding or subsidy between branch and other lines of railway track (Section 159(3) ).

## Appeals

Alberta agrees that there should be an avenue for appeals of abandonment order on public interest grounds. As the appeal section is now worded, service on an economic rail line would have to meet all the criteria set out in Section 165(2) in order to be retained. It should be sufficient for a line to have to meet only one of these criteria. While the appeal mechanism set out in Section 165 is focused on the public interest and regional impacts, provincial governments and municipalities are unable to appeal an abandonment order. The Government of Alberta would urge the federal government to rectify this.

## Information Requirements

The timeliness and amount of information available concerning rail lines are important factors in raising user awareness of the issues and in facilitating the process laid out in Bill C-18. For instance, the railways' notice of intent to abandon (Section 160(2) ) should include such additional information as traffic, cost per ton, estimated cost of rehabilitation, and net salvage value. This would give interested parties and prospective purchasers of the line basic information on which to base decisions. Another area where information flow could be improved is the contents of the annual report (Section 180). Information prescribed here could be usefully supplemented by traffic data, revenues, costs, and cost per ton. Not only does such data raise the awareness of rail users, it also provides basic information to persons who may be interested in providing an alternate service.

## 3.8 Railway Concerns with Bill C-18

It is Alberta's desire that the new National Transportation Act provide a policy that is in the best interests of all regions, users and carriers in Canada. With this in mind, the province wishes to

respond to some of the concerns being expressed by the major Canadian railways with respect to the new legislation.
Railway concerns with Bill C-18 are concentrated on three main areas:

(1) Railways need freedom to manage.
(2) Provisions to regulate rates are unnecessary.
(3) American railways will be allowed more favourable access.

## 1. Freedom to Manage

Alberta recognizes that it is in the best interests of all of Canada to have a financially viable railway system. It is acknowledged that various provisions of Bill C-18 to increase competitive and provide more effective shipper protection will create a downward pressure on overall railway revenues. Therefore, Canadian carriers must be allowed and must seek to be financially viable in the new environment by more effectively reducing and managing their costs and improving their overall efficiencies.

The American rail carriers achieved a significant turnaround in their own financial situations after the U.S. Staggers Act due to a concentrated effort to reduce costs. Alberta believes Canadian railways are, as past history has shown, capable of metting this challenge.

To date, the Canadian carriers have identified two areas where they could achieve cost savings, namely through line rationalization and cabooseless train operations. Extensive comment has already been provided in the preceding section on the line rationalization issue. In recent hearings conducted by the Canadian Transport Commission, the province of Alberta recognized the need for the Canadian railways to reduce cost of operations. Support was given to the railway application to initiate cabooseless train operations to the extent that it did not compromise the safety aspect of the transportation business.

Alberta believes that the railways must receive adequate compensation for the operation of uneconomic rail lines. They must also receive appropriate compensation for any services which they are required to provide in the public interest.

While Alberta is ready to support the railways wherever possible in their efforts to become more efficient cost-effective businesses, the carriers have not identified any other specific areas for the province to consider. Alberta believes that many of the railways concerns relate to enforcement of operating and construction practices. There are best left to be discussed when the Rail Safety Act is considered. Alberta will not compromise safety but is of the opinion that the current approach to administering safety rules could be improved.

## 2. Provisions to Regulate Rates

The railways are contending that Bill C-18 exerts a degree of unnecessary rate regulation through provisions such as competitive line rates, expanding interswitching and final-offer-arbitration. The claim is that certain provisions create regulatory interference where transportation competition and market competition already exist as influencing factors on railway pricing practices.

The intent of Bill C-18 is clear. It is to increase competition where possible and to provide regulation protection where required. Alberta believes that provisions of Bill C-18 offers essential shipper protection to those rail users who would otherwise be captive to the railway. Many shippers who currently lack transportation alternatives to rail must rely on the carrier's assessment of market competition for their products and the shippers ability to pay. What has developed in these times of more competitive world markets is that the shippers themselves have already made major cuts in costs due to greatly reduced market prices.. The railways at best, have limited the amount of their increases in rates. A reduction in the protection provisions of Bill C-18 would further reduce shippers bargaining leverage with the railways and their ability to have any influence on a major factor in their cost of doing business.

The railways also argue that the provisions in Bill C-18 are punitive. While the province would agree that there is potential downward pressure on rates, there are also numerous opporunities created for the railways to generate new traffic, increase volumes of existing products, and recapture traffic previously lost to American railways due to the Staggers Act.

## 3. Access by American Railways

A major concern of the railways of Bill C-18 is that the competitive access provisions will unfairly allow American railways to solicit Canadian traffic. Further, the Canadian railways claim that they will be unable to meet this competition from the U.S. because of cost advantages held by the American carriers.

The studies conducted for the Office of Economic Regulatory Reform by Peat Marwick on the implications of Bill C-18 for the Canadian railways indicate that carrier concerns are overstated. The consultant concludes that the Canadian railways should be able to compete for traffic with U.S. carriers and that,

> "The expected result is competitive pressure from U.S. carriers which will reduce rates charged by Canadian carriers, but that Canadian carriers generally will not have to give up the traffic at issue."

The consultant further estimated that Canadian railway revenue losses from competition with U.S. carriers would be in the range of 1 to 3 per cent of their total revenues. As a further point concerning the impact of Bill C-18 on the railways finances generally, the consultant comments that

> "the substantial grain subsystem of the Canadian railways is insulated from both the competitive and cost reductions provisions of the NTA 1986 and will act as a stabilizing influence for the carriers."

With the large majority of Canada/U.S. traffic moving south, Alberta believes that the relative position of Canadian carriers to American railways on transborder traffic is enhanced through the extensive penetration into the U.S. by Canadian affiliated lines. In addition, certain Canadian and U.S. railways have entered into what have been termed Voluntary Co-ordination Agreements. These are essentially marketing agreements between carriers to provide single line services on traffic between Canada and the U.S. with attendant operating efficiencies such as accelerated interchanges. As an example, such agreements exist between CP Rail, the Soo Line Railway and Sante Fe Railway. Therefore, the ability of the Canadian railways to meet American competition has already been significantly established. Alberta believes that the key for Canadian users and railways to improve their respective positions in a more competitive environment will be to become more efficient in all aspects of their business. Past experience has shown that the Canadian railways have the ability to meet this challenge.

## 4.0 AIR

### 4.1 Introduction

Alberta strongly supports the central theme of the proposed legislation, which is to make the economic regulation of air transportation more responsive to the needs of its users and to the marketplace. We feel that this shift in legislative emphasis from the industry to the consumer will provide a much needed role for communities to influence the level of air service which may be provided to them. In the designated areas, this influence can regulate the type and extent of competitive activity. In the southern regions of Canada where a virtually regulation-free environment will prevail, satisfying community interests will be foremost in the minds of operators.

Alberta is also mindful of the absolute requirement to maintain the standards of air transportation safety. We believe, however, that the most effective means to achieve this goal is by ensuring that the resources required to properly police safety standards are made available to the appropriate agencies. Limiting the level of competitive activity as an indirect means of maintaining safety standards is considered both inefficient and inappropriate.

Although generally supportive of the proposed legislation, there are several features which we particularly support.

## 4.2 Demarcation Line

By differentiating between those regions in Canada that can readily support competitive air services and those regions where open competition may prove disruptive, the proposed legislation recognizes the unique character of Canada's regional development patterns. Alberta agrees that, for the most part, markets situated north of the "demarcation line" are less capable of sustaining unrestricted competition than markets located south of the line. Air services in northern Canada differ in many respects from services in southern Canada. The small, highly dispersed population of Canada's north, combined with a rudimentary surface transportation system, emphasizes the importance of a stable air transportation system and highlights its vulnerability.

In Alberta, the designated zone would be that area north of the 55th parallel. Several Alberta communities are located in the proposed designated zone. To assess the views of residents in the affected communities, Alberta undertook a community input program. This program indicated that northern Albertans are unsure whether their needs would be best served by the deregulated regime in the non-designated zone, or the regulated regime in the designated zone. However, based on all the views, Alberta supports retaining the line at the 55th parallel. This will provide northern Albertans with a degree of security from the destabilizing effects of unbridled competition which many residents perceived as inevitable under deregulation.

To supplement this security, Alberta also recommends that any future relocation of this line require parliamentary approval.

Under the reverse onus test proposed for service applications in northern Canada, affected communities will play a significant role in the determination of new or competitive air services. This proposed shift in onus from the advocates of an air service to those opposing it should improve opportunities for competitive activity and contribute to the stability of northern air markets.

Alberta believes, however, that the reverse onus test should emphasize the views of affected communities on the services being proposed and recommends that the legislation be amended to reflect this emphasis.

Alberta also holds that for the reverse onus test to function effectively, the Agency must adopt procedures that will not only encourage public input but actively solicit this input to the application review process. The quasi-judicial hearing procedures utilized in the past often proved intimidating to would-be participants and should be revised to promote public participation.

While Alberta supports the need for maintaining some economic regulation in northern Canada, it recognizes that the creation of regulated and deregulated zones introduces complex regulatory problems for charter services that cross the demarcation line. The province is especially concerned that the legislation appears to prohibit charter carriers that are only licenced to operate in southern Canada from carrying passengers or goods between a southern and northern point.

This prohibition discriminates against both air carriers and users in southern Canada. Charter carriers are deprived of the opportunity to carry traffic originating at their base, unless they first obtain licences to operate both in northern and southern Canada. The user is denied freedom of choice as he can only select a charter carrier that has operating authority in the north.

Alberta is concerned that this oversight could have significant consequences for Alberta based charter carriers and users. Alberta serves as a gateway to the north, and in fulfilling this role substantial cargo and passengers originate in the province and are destined for points such as Fort McMurray, Grande Prairie, Yellowknife and Inuvik, all of which are north of the demarcation line.

To ensure that the flow of traffic to these and other points is not disrupted, and yet still provide northern based carriers with the protection they require, Alberta recommends that the legislation be amended. Southern based charter carriers should be permitted to carry traffic across the demarcation line if that traffic originated at a point south of the line. On a return trip, a southern based charter carrier would be permitted to carry traffic originating in the south both to the designated zone and then return to the south.

## 4.3 Air Transportation Pricing/Fares

Alberta strongly supports the provisions of the bill which will allow licenced carriers to enter into confidential contracts with third parties. We believe that this provision is an important element in the creation of an air transportation environment which is responsive to the needs of users.

As has been demonstrated in the United States, the opportunity to negotiate confidential contracts with air carriers can improve the potential of tourism attractions. An example illustrating this point features a group of Colorado businessmen who recently negotiated an agreement with American Airlines to provide air service to their community on a risk-shared basis. The service was considered important to the development of the local ski industry and in retrospect has proven to be an effective tourism development tool. To be more competitive in the tourism industry, Alberta needs similar opportunities.

Alberta also supports the provisions of the legislation which will give air carriers greater flexibility in managing their fares. Under these provisions, the industry will have the freedom to respond quickly to changing market conditions without the requirement for regulatory approval of fare changes.

We also recognize the possibility for abuse of this privilege in some circumstances and understand the motivation behind the legislation's provisions for reviewing consumers allegations of unjustified fares and fare increases.

Alberta is concerned, however, that these provisions will address only "basic" fares. Once dominant, these fares now share the air transportation market with a variety of discount fares. The continued availability of discount fares is very important to the development of Alberta's tourism industry. This industry will play a major role in Alberta's future economic development.

## 4.4 Essential Air Services

As mentioned earlier, Alberta supports the approach taken in this legislation wherein regions less capable of sustaining unrestricted competitive activity have been granted a degree of shelter from such activity. Alberta also supports the need to safeguard air services considered essential.

Although most communities in Alberta have access to a variety of year round transportation alternatives, some are severely restricted in both their choice of transportation and its availability. For these communities, air transportation may be the only practical means for personal or cargo transport year round or during certain months.

Alberta supports this bill's provision for federal financial support to air services which, although considered essential, cannot be sustained on a purely commercial basis. In addition, however, Alberta recommends that the bill be amended to include a more detailed description of how the provisions would be administered, including:

a)the circumstances under which compensation for imposed duties will be awarded;
b)the specific types of domestic services which will be considered;
c)the basis for determining appropriate levels of compensation; and
d)the mechanism for administering and funding the program(s).

## 4.5 Operating Environment

As is evident from our introductory remarks, Alberta believes that Bill C-18 will create an environment for competition which will measurably benefit both the air transportation industry and its users.

To respond effectively to these opportunities, however, the industry must be confident that the operating environment will not change appreciably in the near term. The creation of a stable operating environment will require, among other things, that major changes to operating rules be minimized prior to the major review in the fourth year.

In addition to a stable operating environment, the air transportation industry also requires the freedom to innovate and manage in response to changing consumer demands or other market pressures. These measures may be essential in the development of Alberta's Tourism industry.

The current legislation includes provisions which would empower the National Transportation Agency to enact regulations governing the information to be included in tariffs and the terms and conditions under which contracts between airlines and other parties could be conducted. Such restrictions and requirements often frustrate timely industry response to changing market conditions. In the interest of stimulating industry innovation and competitive zeal, Alberta recommends that the authority of the National Transportation Agency to impose these and similar operating conditions be minimized.

The province is also concerned with the impact that computerized reservation systems may have on the operating environment of air services. This very key factor has not been addressed in the legislation. These systems are now the dominant force in the airlines' marketing system, and this dominance will likely increase in the future.

Airlines with a proprietary system potentially enjoy a competitive advantage. They can exercise this advantage in many ways, but the most obvious are the following: refusal to include competitors' services in the system; charging of exorbitant fees; biasing the information provided; and offering incentives which bias carrier selection. If these or similar tactics are employed, a new entrant, or an established carrier wishing to enter new markets, may well find that it is able to compete in all areas except the distribution of information and tickets. Therefore, due to the major development costs and problems of access to other carriers systems, computerized reservation systems can be a significant barrier to entry.

To enhance competitive opportunities, Alberta advocates the establishment of criteria that would eliminate barriers to market entry resulting from computerized reservation systems. These criteria need not be finalized before the passage of this legislation, but should be a priority item for the Agency.

### 4.6 International Air Services

Thus far, we have focused on the provisions of bill C-18 that Alberta generally supports. At the same time, we have endeavored to suggest amendments to those areas of the legislation which we feel could be improved.

In this concluding section, we present our views in respect of an issue which is very important to the development of Alberta's economy - international air services.

International air services are integral to Alberta's economic development. Although they affect development in all sectors of our economy, these services are particularly vital to the development of Alberta's tourism industry. Alberta's success in promoting tourism will, in large measure, depend on how easily tourists can be transported here.

Our principal concern with the legislation's treatment of this issue is the fact that no changes to the traditional procedures have been proposed. These procedures have not featured a meaningful role for air service users, and their endorsement for the future is therefore not consistent with the general theme or the other parts of the legislation which emphasize a high degree of user participation.

Because of the importance of these services, Alberta views as essential its consultation in the process of negotiating international air service agreements. Alberta therefore urges the inclusion of a legislative obligation for the appropriate federal body to consult with the affected province(s) in the course of formulating positions and negotiating international air agreements. Provincial participation is well established in other international trade negotiations for goods and services and is essential to the achievement of provincial/regional development initiatives.

Provision is also recommended for public input to the route award process. This input could be accommodated utilizing a procedure patterned after the one used for route awards under the Canada-United States Regional, Local and Commuter Services Agreement. This procedure would permit air carriers to express interest in international licences and allow users to indicate which proposal they favor. The carrier selected would then reflect the perceived needs of the air service users.

Alberta also has concerns about the performance of Canadian air carriers designated to provide international air service. Since most often only one Canadian carrier is designated to serve a particular route, actual competition is often limited.

To create a competitive service incentive, Alberta recommends that a "use it or lose it" provision be applied to all international route awards. Consistent with this view, Alberta would strongly support a legislative provision which required designated air carriers to provide a satisfactory level of service or risk the loss of the route authority.

Similarly, for those international air routes where no Canadian air carrier has indicated a willingness to provide service, consideration should be given to the concept of inviting a foreign carrier to seek the Canadian designation. Such a designation could be awarded for a minimum of five years and be subject to review thereafter.

All of the foregoing commentary reflects Alberta's concerns about the importance of international air services and the need to dramatically increase the role of the user in the process which produces and operates such services. While we have advocated legislative changes which would radically alter the process by which international services are negotiated and awarded, Alberta still recognizes that the federal government must retain the prerogative to intervene in the national interest.

## 5.0 EXTRA-PROVINCIAL TRUCKING: MOTOR VEHICLE TRANSPORT ACT 1986 - BILL C-19

### 5.1 - Introduction

On February 27, 1985, a Memorandum of Understanding (MOU) was agreed to and signed by all Provincial/Territorial and Federal Ministers of Transport. Through the MOU, the Transportation Ministers directed the Provincial/Territorial Motor Transport Boards and Commissions to streamline and reduce the regulatory burden on extra-provincial carriers applying for operating authority to travel between and through all jurisdictions across Canada.

Bill C-19, the Motor Vehicle Transport Act, 1986 generally follows the Minister's Memorandum of Understanding.

With a few minor wording changes, Bill C-19 is the same as Bill C-127 which died on the order paper, when Parliament prorouged in the fall of 1986.

Alberta fully supports Bill C-19, as it should bring about a very high degree of uniformity of rules and policies among and between all 12 jurisdictions in Canada.

Under delegated authority from the federal government through the Motor Vehicle Transport Act (Canada), provincial Motor Transport Boards have carried out the economic regulation of extra-provincial trucking since 1954.

### 5.2 Provisions of Bill C-19

Bill C-19 is intended to replace the existing Motor Vehicle Transport Act of 1954. The major thrust of the Bill is to re-regulate the extra-provincial trucking industry in Canada and reflects the initiatives for regulatory reform contained in the MOU of 1985.

The new federal Act prescribes, effective January 1, 1988, an entry criteria which shifts the burden of proof (reverse onus) from the applicant to the objector/respondent. The applicant carrier must also meet a "fitness test". When the reverse onus test is sunsetted in 1991, the fitness test will be the only entry criteria for new applicants.

The major thrust of the fitness test will be safety. The Council of Ministers Responsible for Transportation and Highway Safety, have approved a Uniform National Safety Code (NSC). The NSC includes 18 standards for vehicles and drivers. The tasks associated with the NSC workplan and implementation have all been assigned and are in progress. Implementation is targeted to commence on January 1, 1988 with a 3 year phase-in program which will be fully operational by December 1990.

## 5.3 Public Hearing Criteria

At pages 1 and 3 of Appendix 4 in the second part of this submission, the Minister's MOU, the Entry Standards for new applicants, and the requirement for an objector under the shift of burden of proof criteria, are stated in straight forward simple language and are better understood by the trucking industry than the proposed wording in Bill C-19.

Alberta recommends the MOU language should be better reflected in the MVTA, for simplicity. At line 28 of section 7(3), the word "detrimental" is used. At line 25 of section 7(4), the words "likely be detrimental" are used. The Revised Entry Standards, attached to the Minister's MOU, at page 3, use the words "potentially be detrimental". Alberta believes that by dropping the word "potentially," it will have the effect of the Motor Transport Board's being given no discretion in their decision making process. Alberta recommends the words "potentially be detrimental," as approved by the Minister's MOU be included in the MVTA.

## 5.4 Limitation

Section 7(6) prescribes a sunsetting of the reverse onus test three years after this Act comes into force.

Alberta is concerned with sections 7(6)(a) and (b). Alberta believes that Motor Transport Boards must have the ability to, under certain circumstances, restrict or condition a carrier's operating license. Particularly, the Boards may wish to prohibit a carrier from transporting dangerous goods, if he has not shown that he is willing to haul dangerous commodities in a safe and protected fashion.

Alberta recommends that sections 7(6)(a) and (b), be modified to allow Motor Transport Boards to, at least, place prohibition restrictions on operating licenses, or have the ability to condition a license relating to the fit and safe operations of any carriers specific vehicles.

## 5.5 Regulations

Section 8 provides the federal minister with very broad regulation making powers, after consultation with provincial governments. However, there is no provision for a province to opt-out, or veto any proposal of the federal minister.

Alberta recommends that the federal minister must obtain agreement from all 12 jurisdictions before proclaiming any regulations affecting the operation of extra-provincial truckers under the regulatory control, by delegation, of Provincial Motor Transport Boards.

At section 8(g) the federal minister is given wide regulation making powers to prescribe safety standards for the operation of extra-provincial trucking undertakings.

While Alberta recognizes the federal governments' legislative ability to determine safety standards for newly manufactured vehicles, Alberta's position is that only the provinces have the legislative ability to determine and set operating safety standards on their own highway system. Such legislation is totally within the domain of provincial regulation making powers.

Alberta recommends that section 8(g) and part (i) and (ii) be deleted from the proposed MVTA.

At section 8(h), the federal minister if given very wide sweeping regulation making power to "prescribe (regulations) on any other matter or thing." Again, if after consulting the provincial governments, the minister does not obtain unanimity, what remedy is available to the provinces to opt-out, or seek relief from any federal regulation?

Alberta recommends the federal minister must obtain agreement from all 12 jurisdictions before enacting any new regulations or allow regional or individual choice to implement proposed legislation.

As an alternative, section 8(h) should be repealed in total.

### 5.6 Continuation of Licenses

Since the enactment of the Motor Vehicle Transport Act, 1954, rightly, or wrongly, all provincial jurisdictions in Canada have been issuing intra-provincial licenses under provincial legislation, presumably having not been made aware, that some of these licenses should have been issued under the delegated power of the MVTA.

Referring to sections 25 and 26 of the proposed MVTA, all existing intra and extra-provincial licenses issued under the MVTA will continue under the new Act. However, if existing intra-provincial licenses have been issued under provincial statutes through a 33 year oversight, the new proposed MVTA must carry a "deeming" section to have those particular intra-licenses remain in force under the new MVTA.

Alberta recommends section 25 for bus undertakings and section 26(2) for trucks be modified to include all intra-provincial licenses issued (albeit, perhaps illegally) under provincial statutes, and that they be deemed to be continued under the new MVTA.

### 5.7 Conclusion

With the staged implementation of the Uniform National Safety Code of January 1, 1988, Alberta is satisfied that full Regulatory Reform for the Extra-Provincial Trucking Industry can be achieved by January 1, 1991, when the only entry criteria should be fitness/safety/insurance.

## 6.0 NORTHERN MARINE RESUPPLY SERVICES ISSUES

### 6.1 Introduction

In the province of Alberta there are three distinct groups which have an interest in northern marine resupply services. There are the carriers themselves, including Northern Transportation Company Ltd. (NTCL) and Arctic Transportation Ltd. (ATL) which are the two major companies serving the MacKenzie River system. Pine Creek Marine Ltd. and A-Frame Construction are Alberta resident carriers providing service on the Athabasca River. The community of Fort Chipewyan, Alberta relies heavily on the Athabasca River to receive fuel and other goods. Also a number of Alberta companies receive significant economic benefit in supplying the goods and services used in the north. It is therefore essential that the legislation concerning marine resupply service out of Alberta provide for the long term viability of the carriers, and ensure that communities which depend on the system are not disadvantaged in terms of price or service.

### 6.2 Licencing

Alberta is pleased that the term for licencing has been extended to more than one year. It is expected that carriers will be able to make better business decisions in an environment where there is more certainty in licencing. We are also positive about the licencing of fleet capacity rather than individual vessels.

However, the granting of grandfather rights may more accurately reflect the involvement of carriers in the north if it is based on several years of service rather than one year.

The volume of traffic available to existing northern marine resupply carriers does not readily support the entrance of new carriers. This is recognized in Part V wherein a new entrant must illustrate the means to provide the service and that a need for the service exists. However, carriers with a fleet capacity less than 100 registered tons may operate services without meeting this requirement. To the extent that such carriers may erode the traffic base of regulated carriers, especially cargo of high value to the carrier, measures to regulate entry of small carriers (carriers with fleets of less than 100 gross tons) should be in place. One way of accomplishing this would be to regulate entry on water systems where annual average traffic volumes for the previous 5 years is greater than 15,000 tonnes. Alberta's concerns are primarily directed at the Athabasic water system.

## 6.3 Imposed Public Duties

Part V does not recognize that transportation services play an important part in asserting Canada's sovereignty in "the North". To the extent that such services constitute an "imposed public duty", the federal government must provide adequate compensation to the carriers.

## 6.4 Competitive Routes

The availability of adequate levels of transportation service at prices which are determined in a competitive environment is the key to serving the needs of northerners. A sustained competitive environment can and must be nurtured through public policy that recognizes the need for adequate levels of service by all modes and routes providing transportation services. The regulation of northern marine resupply services, without recognizing the need to maintain a competitive balance, may ultimately result in erosion of the traffic base for these services and a decline in the overall quality of transportation services in the north. The province of Alberta believes that legislation affecting northern marine resupply services must promote this competitive balance between competing routes and modes serving communities in the area while recognizing Alberta's historical role as the "Gateway to the North".

## 7.0 COMMODITY PIPELINES

### 7.1 Introduction

Currently there are no major interprovincial commodity pipelines in Canada which would be regulated under Part VI of Bill C-18. Even though the province of Alberta has studied in detail the feasibility of commodity pipelines, the economic climate would not support construction of a dedicated commodity pipeline.

Given that it is the intention of the Government of Canada to regulate the movement of commodities in pipelines, the province of Alberta believes that, commercial and/or economic viability should be the basis for construction of such systems. Legislative parity must be provided if shippers are to have access to commodity pipelines on a basis which is competitive with other modes of transportation.

### 7.2 Commodity Pipeline Definition

Section 228 of Bill C-18 does not provide a specific identification of commodities to which this part of the Act applies. This is understandable given the wide scope of potential products. However the inclusion in the definition of a "commodity pipeline" to include "loading facilities, storage facilities, reservoir, tanks, preparation plants, separation plants, and works connected therewith" is of serious concern. It is the view of Alberta that it is inappropriate for the NTA to regulate facilities which are an integral part of production facilities. By specifying that the legislation applies to "facilities which are expressly constructed for the purpose of transportation", this problem may be resolved.

A further complication which may arise from the definition of a "commodity pipeline" exists where a product such as methanol or anhydrous ammonia is shipped in batches through a pipeline currently regulated by the National Energy Board Act. If the shipper is subject to the conditions of the NEB Act they would not have access to the confidential contracting provisions that a competitor using a "commodity pipeline" or a railway would. Alternately, shippers of hydrocarbons may seek access to "confidential contracts", if it is in their best interest, by shipping batches through a commodity pipeline. It is the view of the province of Alberta that further provisions are required to provide for "batching" of hydrocarbons and commodities using the same pipeline.

## 7.3 Cost of Ensuring Permit Compliance

Legislation providing for the regulation of pipelines during construction and operations is in the public interest. Therefore it is not appropriate to require carriers to pay for services provided by the Agency to ensure compliance of the terms and conditions of a permit. By comparison, a railway, which would in certain cases be in competition with commodity pipelines, would not be required to pay compensation for inspection of bridges by the Agency.

## 8.0 MERGERS AND ACQUISITIONS

Alberta is generally supportive of the provisions in Bill C-18 dealing with mergers and acquisitions. These measures, in concert with the Investment Canada Act and the new Competition Act, provide adequate control without being too restrictive. Alberta also supports the minimum Canadian ownership constraint that applies to voting shares in any Canadian air carrier. Special treatment of this mode is justified because foreign ownership and control is an important consideration in the context of international bilateral air agreements.

Alberta does not consider it appropriate however, to subject provincial government acquisitions of transport companies to the restrictions of this Bill since this may limit options for initiatives to strengthen the regional economy. Furthermore, the Province does not believe that when one government acts in the public interest, another government or its agency should pass judgment on its action. In light of the above, Alberta recommends that acquisitions of transport companies by provincial governments should be exempted from the ownership restrictions of Bill C-18.

## 9.0 NATIONAL TRANSPORTATION AGENCY

It is appropriate that major transportation policy changes are accompanied by revising the role and structure of the industry's main regulatory body. Alberta supports the establishment of the National Transportation Agency oriented to a more competitive environment, wherein the regulator's responsibilities are more akin to those of an impartial referee than one of the major participants.

The proposed legislation will diminish the role of the Agency in the formulation of policy. It is desirable that policy-making be in the hands of the Government rather that its Agency, however Alberta values the autonomy of the Canadian Transportation Commission in regulatory matters, and the new Agency should also be granted a similar degree of independence.

Alberta also supports the maintenance of an Agency office in the west similar to the CTC's Saskatoon office. It is acknowledged that the CTC's Western Division has not been problem-free. In particular, the duplication of functions in Ottawa and Saskatoon made the regional office redundant in some areas, and complicated administration. Nonetheless areas of responsibility which were delegated in full to the Western Division, such as branch line abandonment applications, were reasonably successful. The regional office of the new Agency could enjoy similar successes provided its organizational structure is compatible with the main office and the changes in the proposed legislation.

A concern of the Alberta Government with regard to the CTC is the time consuming nature of some parts of the regulatory process. In the past several important decisions have taken so long to hand down that shippers have been extremely reluctant to use regulatory mechanisms even when they had serious and legitimate problems which should have been referred to the Commission. The proposed legislation eliminates some regulatory procedures and expedites others, but there are new procedures which are potentially very time consuming. To ensure their effectiveness every effort must be made to ensure the regulatory procedures administered by the Agency are as expeditious as possible.

Alberta believes the Agency should have a user-orientation, consistent with the philosophy of the legislation. This will necessitate close contact between the Agency and users, and accessibility to the Agency either through visits of Agency staff to affected communities, or through the use of regional offices.

This user-orientation should not result in the Agency overlooking carrier problems. Cost reduction is especially important to carriers and to the efficiency of the transportation system in general. This is essential to maintain carrier viability in view of the limited scope for sizable revenue gains. To facilitate cost reductions the Agency must quickly approve tests of new equipment or work practices which have cost-reduction potential, and permit implementation of these changes immediately upon successful completion of the tests. In addition, high priority must be given to railway efforts to reduce costs through the rationalization of their infrastructure through abandonment of some low-density lines, or by transferring responsibility of servicing these corridors to lower cost carriers or to other modes.

## 10.0 INFORMATION REQUIREMENTS

Two of the key principals of the revised National Transportation Act are the reliance on competitive market forces whenever this is practicable, and the introduction of revised regulatory procedures to better cope with those circumstances when competition is absent or ineffective. Both competition and regulation require relevant and timely information in order to operate as intended, however these needs are not fully addressed in Bills C-18 or C-19.

Information is an essential ingredient of an efficiently functioning market place. Since the proposed legislation creates a more market-oriented environment, information requirements will tend to grow. At the same time, changes such as the allowance of confidential contracts in the rail and air modes will remove or decrease the usefulness of current information sources. While Alberta supports confidential contracts it is recognized that their introduction could make information gathering tasks more complex or impossible. To assist users and carriers in this regard, contract summaries of non-confidential data should be sufficiently detailed such that interested parties will be able to monitor key trends. In addition, data collected by Statistics Canada must be maintained and in some cases enhanced, and it must include aggregated data derived from confidential contracts.

The regulatory process for both rail and air include new mechanisms which also have specific information requirements. Procedures such as final-offer-arbritiation cannot operate effectively if shippers are unable to address the criteria due to lack of data. Similarly, in the partially deregulated aviation environment north of the demarcation line, sufficient information must be available to enable meaningful public participation in air service applications.

A vital function of the regulatory agency is to undertake annual reviews of the legislation. This requires the collection and analysis of data both prior to and after the legislation comes into effect, in order to try to determine its impact. To ensure the thoroughness of the review process, extensive discussions should be held with affected parties and the studies used in preparing the Agency's report should be made public. Disclosure requirements in Bill C-18 are limited and basically designed to protect confidentiality. This may inhibit information dissemination with negative consequences for market efficiency, regulatory procedures and the legislative review process. To offset this risk the legislation should include a clause which will ensure that sufficient public information is distributed to enable the Act to function as intended, and that disclosure restrictions are not used to obstruct that distribution.

In the past, provincial governments have demonstrated the value of their participation in the development of transport policy. In order to remain useful participants in this process it is necessary for the provinces to have access to information on which federal initiatives are based. Therefore, Alberta recommends that the legislation be amended to allow the federal Minister to transmit relevant information to provincial governments and their agents.

## 11.0 SUMMARY OF ALBERTA'S RECOMMENDATIONS

### Section 2: National Transportation Policy

### Transportation and Regional Economic Development

1. The recognition of transport as a key to regional economic development should be expanded to provide an additional statement acknowledging that the commercial viability of transportation links must be balanced with regional economic development objectives [Section 3(1)(d)].

2. The policy statement should recognize the importance of multimodal systems in the future development of transportation [Section 3].

### Section 3: Rail Issues

### Confidential Contracts

3. Alberta supports the provision to allow carriers and shippers to negotiate confidential contracts [Section 120].

### Elimination of Collective Pricing

4. Alberta supports the repeal of the section of the Railway Act allowing rail carriers to collectively set rail rates [Section 339].

### Competitive Line Rates

5. The potential for the railways to use the wording in Section 134 to deny competitive line rates to shippers on a routing via a U.S. carrier from a Canadian origin to a Canadian destination should be eliminated [Sections 134(5) and (6)].

6. Legislation should be amended to alter requirement for use of the nearest interchange to allow for use of an alternate interchange as may be agreed to by the shipper and local carrier [Section 134(7)].

7. The Agency should be provided the discretion to allow a competitive line rate to apply for a distance greater than 500 miles or 50 per cent of the total route miles when conditions warrant [Section 135(4)].

8. The competitive line rate calculation is to include an interswitching charge. The interswitching charge used should be that amount for the shortest distance zone as approved by the Agency [Sections 137(1) and (2)].

9. Where a shipper requires competitive line rates for traffic which moves to multiple destinations on the connecting carrier, the originating carrier or the agency should be able to set a single competitive line rate for all such movements [Sections 135 and 137].

## Expanded Interswitching

10. Alberta supports the expansion of interswitching distance. It is recommended that limits be expanded to 30 kilometers or railway switching limits whichever is greater, so as to add flexibility to the new limit [Section 153(2)].

11. Alberta supports revised levels of interswitching rates. It is recommended that no portion of an interswitching rate be passed on to the shipper by the line haul carrier. Interswitching rates should be set between the carriers subject to Agency approval and should be standardized at all points in Canada [Sections 153(4) and (5)].

12. The Agency should set an interim tariff of interswitching rates to be available with enactment of the legislation and remaining in effect until the carrier set rates are approved [New Section].

## Terminal Running Rights

13. Alberta supports the provision for terminal running rights between carriers [Sections 149 and 150].

## Final-Offer Arbitration

14. Alberta supports use of final-offer arbitration for domestic, export and U.S. transborder rates.

15. The authority for the Agency to refer an application for arbitration to the public appeals process should be removed thereby making it the shippers decision which avenue of appeal is taken. [Section 48(3)].

16. In order to ensure the arbitration process can achieve its desired results as expeditiously as possible, the criteria stated to guide the arbitrator should be amended to the following [Section 51]:

(a) changes in the cost of providing the transportation service to which the matter relates, including consideration of the impact of efficiencies instituted in provision of this service either by the shipper or the carrier;

(b) the contribution to constant costs to the carrier from the transportation of the goods to which the matter relates in comparison with the carrier's contribution to constant costs from the transportation of other goods;

(c) the ability of the shipper to compete in respect of the traffic in question, having regard to its long term economic costs and to the national and international market conditions that pertain to the goods to which the matter relates;

(d) the quality of the carrier's transportation service to which the matter relates;

(e) the shipping practices of the shipper in connection with the transportation service to which the matter relates, and the effect of those practices on the carrier's operations; and

(f) whether there is available to the shipper an alternative, effective, adequate and competitive means of transporting the goods to which the matter relates."

17. Any information submitted in support of a final offer by either the shipper or carrier must have been previously exchanged between the parties during the course of the negotiations. Only the arbitrator may request additional information for clarification and this must be made available to the other party [Section 48(2)].

18. The time period for which an arbitration decision is binding should be flexible in order to reflect the situation under consideration [Section 52(2)(c)].

## Public Interest Appeal

19. Alberta recommends that public bodies such as governments of a province be allowed to request the Agency to initiate an investigation [Section 59(2)].

## Mediation

20. Alberta supports provision of a voluntary mediation service by the Agency for carriers and shippers [Section 46].

## Intermediate Agencies and Shippers

21. The opportunities for small shippers to benefit from this legislation must be protected by including intermediate agencies such as brokers, freight forwarders, pool car operators and shipper associations in the definitions of "shipper" [Section 4].

## Rail Information Requirements

22. It is recommended that the Agency be given the power to collect and publish data and information it determines to be necessary for the effective implementation of the Act [Section 268].

23. The Agency should be required to publish not less than annually a comprehensive railway cost index similar to that produced by the American Association of Railways [Section 268].

24. Specific costing requirements such as those laid out in the minimum rate rule [Section 112] and the determination of actual loss for a rail line [Section 157] should be eliminated. In their place there should be a requirement for a general review of railway costing methodology relative to the end uses required by the Act. [New Section in Part VIII].

25. Provinces which receive confidential railway cost data under provisions of Section 268 of the NTA 1986 or Section 331.1 of the Railway Act should be permitted to allow consultants to

have access to that data provided confidentiality is maintained.

26. To ensure those shippers which do not shift to confidential contracts have at least the same information base as they have now, it is recommended that

(1) a system of tariffs be maintained, published and available for all;

(2) special arrangements be covered by a tariff; and

(3) the Canadian freight classification, tariffs of class rates and a tariff index should be maintained [Sections 114 to 118].

## Rail Line Rationalization and Subsidy

27. The Government of Alberta believes that Bill C-18 has the necessary components for a rail line abandonment and subsidy process which balances the public interest with the railways' desire to reduce the costs.

28. Provisions for transitional funding [Section 175] should be considered as an option to retaining a rail line and make provision for its negotiation before the formal abandonment process starts.

29. Restrictions on the availability of transitional funding for grain dependent branch lines should be eliminated [Sections 175(1) and (6)].

30. For lines protected from abandonment to the year 2000, transitional funding should be available over the same time time horizon [New Section].

31. Short line railways should not have to be federally incorporated and should only be bound by the new National Transportation Act [Sections 158(4) and 174(6)(b)]. Reference to other Acts of Parliament should be omitted to give the short line railway greater flexibility to adapt labour and operating practices to the area being served.

32. Short line railways should be considered as possible lower cost alternatives for providing rail service on rail lines ordered continued in the public interest [Sections 173(1) and 178(3)].

33. All rail lines should be treated the same. Provisions for subsidy [Section 178] and transitional funding [Section 175] should be available for all lines, not just branch lines.

34. Appeals to Governor-in-Council for continuance of service on an uneconomic line should not have to meet all the criteria laid out in Section 165(2). A service on a line should have to meet only one of the criteria.

35. Provinces and municipalities should also have the right to appeal rail line abandonments to Governor-in-Council [Section 165(2)].

36. Information available on rail lines should be increased to facilitate the process laid out in Bill C-18 and to increase public awareness [Section 160(2) and Section 180].

37. Subject to the provision that a cost review is conducted the exclusion of overhead costs should be deleted [Section 157(3)].

38. The factors listed in the public interest review should be supplemented by a requirement to consider the costs of

rehabilitation and other future capital requirements [Section 167].

## Section 4: Air Issues:

### Demarcation Line

39. The views of affected communities should be emphasized in the review of an air service application (including reverse onus test) [Section 72].

40. Legislation should be amended to permit southern based charter carriers to carry traffic originating in the southern zone to and from the designated zone [Section 71(2)].

41. Demarcation line should only be amended by Act of Parliament [Section 102].

42. Air carriers licenced to operate in the designated zone should automatically receive authority to also operate in the southern zone [Section 72(2)].

### Air Transportation Pricing/Fares

43. Air fare review mechanisms should extend to all fares, not just 'basic' fares [Section 80].

44. Strongly support confidential contracts; this is an important element in the creation of user responsive environment [Section 79(2)].

### Essential Air Services

45. Details pertaining to this section's administration should be formulated: (a) criteria for compensation, (b) types of

service considered, (c) levels of compensation and (d) administrative mechanism [Section 85].

## Operating Environment

46. Major changes by the Agency to operating rules should be minimized during the four year period prior to the major review [Section 102].

47. The authority of the National Transportation Agency to impose tariff and operating conditions should be minimized, e.g., confidential contracts entered into with tour operators and charters [Section 102].

48. Encourage the Agency to establish criteria to eliminate entry barriers associated with Computerized Reservations Systems.

## International Air Services

49. Provinces to be consulted by federal authorities in the course of formulating positions and carrying on negotiations for international air agreements [Section 86].

50. Provision be made for public input into the route award process for international scheduled services [Sections 88 and 89].

51. Apply a "use it or lose it" provision to all international scheduled services [Section 92].

52. Award Canadian designated international routes to interested foreign air carriers for a minimum period of five years in those situations where no Canadian air carrier shows an interest in operating the route [Sections 88 and 89].

53. Consistent with the objective of easing market entry, applicants for a non-scheduled international licence should not be subject to a public interest test in order to obtain the licence [Section 94].

## Section 5: Extra-Provincial Trucking Issues

54. Alberta supports Bill C-19.

### Public Hearing Criteria

55. Alberta believes that wording of Bill C-19 is too complex and recommends that use of wording from the Ministers' Memorandum of Understanding would be better understood by the trucking industry and would better reflect the intent of the MOU [Section 7(3)(4)(5)].

56. Limitation

Alberta recommends that certain sections of Bill C-19 be modified to allow Motor Transport Boards to, at least, place prohibition restrictions on operating licenses, or have the ability to condition a license relating to the fit and safe operations of any carriers specific vehicles [Section (7)(6a)(6b)].

57. Regulations

Alberta recommends that the federal minister must obtain agreement from all 12 jurisdictions before proclaiming any regulations affecting the operation of extra-provincial truckers under the regulatory control, by delegation, of Provincial Motor Transport Boards [Section 8].

58. Alberta recommends that the legislation must be revised to ensure only the provinces have the legislative ability to determine and set operating safety standards on their own highway systems [Section 8(g)].

59. Alberta recommends the federal minister must obtain agreement from all 12 jurisdictions before enacting any new regulations or he must allow regional or individual choice to implement proposed legislation [Section 8(h)].

## Continuation of Licenses

60. Alberta recommends provisions of Bill C-19 for bus undertakings and section 26(2) for trucks be modified to include all intra-provincial licenses issued under Provincial Statutes, and they be deemed to be continued under the new MVTA [Section 25 and 26(2)].

## Entry Criteria

61. With the staged Implementation of the Uniform National Safety Code of January 1, 1988, Alberta is satisfied that full Regulatory Reform for the Extra-Provincial Trucking Industry can be achieved by January 1, 1991, when the only entry criteria should be fitness/safety/insurance.

## Section 6: Northern Marine and Resupply Services Issues

### Licencing

62. Alberta recommends that granting of "grandfather" right's for licencing of carriers under the new environment should be based on several years prior service rather than only one [Section 225].

63. Alberta recommends that all carriers, even those with a fleet capacity of less than 100 registered tons, should be regulated by provisions of Part V if annual average traffic volumes on a particular river system for the previous 5 years is not greater than 15,000 tonnes [Section 210(2)].

### Imposed Public Duties

64. Where service in the north by carriers constitute an imposed public duty, the federal government should ensure adequate compensation is provided [New].

## Section 7: Commodity Pipelines Issues

### Commodity Pipeline Definition

65. Alberta recommends that the definition of commodity pipelines be limited by stipulating that the facilities described are facilities which are expressly constructed for the purposes of transportation [Section 228].

66. Further provisions are required to allow for the "batching" of hydrocarbons and commodities using the same pipeline [New].

### Cost of Ensuring Permit Compliance

67. Alberta recommends that carriers should not be required to pay for costs incurred by the Agency in ensuring compliance with terms and conditions of a permit [Section 242].

## Section 8: Mergers and Acquisitions

68. Acquisitions by provincial and municipal governments and agents thereof should not be subject to review under this part [Section 251].

## Section 9: National Transportation Agency

69. The legislation should clearly state that the Agency should establish regional offices which possess the necessary authority to render decisions [Section 20].

70. Interest groups representing air passengers should be afforded the same opportunity to appear before the Agency as those representing shippers.

## Section 10: Information Requirements

71. The legislation must include a clause which would ensure that sufficient public information is available to enable the Act to function as intended and to allow all interested parties to fully participate in the review of the legislation [Sections 266 to 268].

72. The legislation should be amended to allow the provinces to request the Minister to secure information it requires to carry out their mandates, represent the interests of their province to the Minister and the Agency, and to participate in the proposed reviews of the Act.

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# APPENDIX

## GOVERNMENT OF ALBERTA

# SUBMISSION TO THE HOUSE OF COMMONS STANDING COMMITTEE ON TRANSPORT

The National Transportation Act, Bill C-18
The Motor Vehicle Transport Act, Bill C-19

MARCH, 1987

Alberta

# APPENDIX

## GOVERNMENT OF ALBERTA
## CLAUSE BY CLAUSE
## COMMENTS CONCERNING BILLS C-18, C-19

Alberta Economic Development
and Trade

and

Alberta Transportation and
Utilities

# PREFACE

THE COMMENTS PROVIDED HEREIN ARE OFFERED TO ADDRESS ISSUES IDENTIFIED BY THE GOVERNMENT OF ALBERTA. THE SPECIFIC WORDING PROVIDED HAS BEEN PREPARED WITHOUT DIRECT LEGAL CONSULTATION.

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## SECTION 3

### Issue:

Regional economic development and viability of transportation links in national transportation policy (S.3(1)(d)).

### Concern:

The statement that transportation is recognized as a key to regional economic development is viewed by Alberta as a positive revision to the statement of national trnasportation policy. Alberta is concerned that the policy statement does not provide for the second part of the clause which all Canadian premiers have agreed should also be in national policy. That clause provides for a balancing of the commerical viability of transportation links with regional economic development objectives.

### Recommendation:

Section (3)(1)d should be expanded to include the underlined words

> "transportation is recognized as a key to regional economic development, and commercial viability of transportation links shall be balanced with regional economic development objectives"

Issue:

The importance of multimodalism in Canada (S.3).

Concern:

Multimodalism enables shippers to utilize the most efficient mode for each segment of a movement. The inherent advantages of multimodal transportation for many types of shipments will contribute to the growing significance of such systems in a more competitive environment. A national transportation policy for Canada's future must recognize the importance of multimodal systems. The current policy statement does not do this.

Recommendation:

The statement of national transportation policy must be expanded to recognize the government's role in facilitating the development of multimodal transportation systems in Canada.

## SECTION 4

**Issue:**

Definition of shipper (S.4)

**Concern:**

With increasing inter-modality and multi-modality the label shipper becomes much broader. From a carrier standpoint the shipper would appear to be the party who contracts for their service. However in the case of inter-modal shipments this would not be the party who "sent" the goods.

It is believed that there will be an increasing involvement of "third party" agencies in the transportation scene. This has certainly been true in the U.S. and a similar occurrence can be expected in Canada. In particular these agencies are used by small business to create transport cost reductions and operating efficiencies. Where the small business must make use of the new provisions of the Act, it will be through such intermediate agencies.

**Recommendation:**

The definition of shipper should be expanded to ensure that the rights and interests of the owners of the goods, and the rights and interests of the carriers vis-a-vis the owners of the goods, are protected.

This could be accomplished by amending the definition of "shipper" in S.4 by adding the underlined words.

> "shipper" means a person who sends or receives goods by means of a carrier or intends to do so; and includes intermediate agencies such as brokers, freight forwarders, pool car operators, shippers associations, container operations, and the like".

Issue:

Definition of "Goods" is not consistent for all modes (S.4)

Concern:

Only Part III Rail expands the definition of "Goods" by the definition of "Traffic". Both Air and Truck are moving containers on Freight All Kinds rates, in effect making the container a commodity or "good".

Recommendation:

Amend definition of "Goods" in Section 4 to cover intermodal equipment, by adding the underlined words.

> "goods" includes intermodal equipment, rolling stock and mail.

Issue:

Regional presence of the National Transportation Agency (S.20).

Concern:

Many of the aspects of Canadian transportation are regional in nature. By example, most rail ton-miles are generated in western Canada. Thus, to carry through on the principle of orientation to facilitating solutions to problems of shippers and carriers, the rail division of the National Transportation Agency would appropriately be located where most of the activity occurs. Both shippers and carriers would be better served by an Agency which is accessible and possesses the necessary authority to render decisions.

Recommendation:

Legislation should clearly state that the Agency should develop a regional presence with autonomy in regional issues.

To accomplish this it is suggested that Section 20 be amended by adding two new paragraphs reading

> "The Governor in Council, upon the recommendation of the Minister, may establish at any place or places in Canada such office or offices as are required for the Agency."
>
> and
>
> "In this respect there shall be regional offices in which shall be headquartered a quorum of members with responsibility for hearing issues pertaining to that region and authority to reach decisions."

## SECTION 36

### Issue:

Wording of Section 36 regarding appearances before the Agency overlooks involvement of interested groups representative of air passengers (S.36)(2).

### Concern:

In this Section there are two concerns. One is that representatives of air passengers not be denied opportunity to make representations before the Agency. The other is that not all activities are "hearings".

### Recommendation:

Section 36(2) be amended to broaden parties allowed to appeal; and alter "hearings" to "proceedings".

Amend Section 36(2) by eliminating the word "hearing" and inserting words as underlined (*** indicates word(s) eliminated), making it read

> "(2) At any *** proceeding of the Agency for the purpose of making any order or giving any direction, leave, sanction or approval in respect of any matter under the jurisdiction of the Agency, the Agency may, notwithstanding any provision of the Railway Act, the National Energy Board Act or this Act, permit the representative or agent of any provincial or municipal government or any association or other body representing the interests of shippers or passengers in Canada to appear and be heard before the Agency."

SECTION 41

Issue:

Review of Agency decisions and orders (S.41)

Concern:

Review or rehearing of a topic by the Agency members that made the original decision may be counter productive to recognition of the value of new information.

Recommendation:

Amend legislation to require that the review be done by a panel made up of different members.

This can be accomplished by adding another paragraph to S.41 reading

> "Such review or rehearing will be referred to a panel of different agency members"

Issue:

Agency may convert a request for Final Offer Arbitration into a Public Interest Investigation (S.48 (3)(b)).

Concern:

Section 48(3)(b) permits the Agency to convert an arbitration request to a request for action under Section 59 in the event of significant public interest. On this basis, it may be argued that large shippers may be denied access to final-offer arbitration. The railway may argue in a dispute that since the shipper provides a high level of revenue which may be significantly reduced by arbitration, its long term viability as a railway could be jeopardized. As such the railway may further argue that it is a matter of public interest since service might be denied or degraded to other shippers.

No one shipper large or small should bear responsibility for railway viability. Railway viability is a system problem and should not be considered when a shipper and a carrier are looking for resolution of a specific rate dispute.

In addition, it will be recognized that no arbitration proceeding will be dealing with the whole rate, but with an incremental portion. No individual shipper, of any size, pays more than a small portion of any carrier's total revenue.

The choice of mechanisms for dispute resolution should rest completely with the parties. They make this choice on many factors, not the least of which is cost. An enforced substitution of a higher cost option could cause a shipper to withdraw, which may become, in effect, a denial of access.

Recommendation:

It is our recommendation that Section 48 3(b) should be deleted.

SECTIONS 48 AND 49

### Issue:

Choice of arbitrator (S.48 2(d), S.49(1)(a) & (b))

### Concern:

The direction of the legislation is to produce industry/carrier developed solutions. The legislation presently restricts arbitrators to those on the approved list, and, should they not be available, places the authority with the Agency to choose a replacement. To support the principle that this activity must proceed to the greatest extent possible under agreement between the parties, the parties should be able to choose any arbitrator on whom they can agree. If the chosen arbitrator is unavailable, the parties should be asked for their opinion as to how to proceed. At that point, the case either waits for the chosen arbitrator, or the parties choose another arbitrator, or the Agency chooses from the approved list.

### Recommendation:

Amend Section 48(2) (a) by the addition of the words underlined

> "(a) the chosen arbitrator, if any, referred to in paragraph 48(2)(d), if that arbitrator is available to conduct the arbitration; or if such arbitrator is now, in the opinion of the parties unavailable, such other arbitrator that the parties may agree upon, or

Amend Section 48 (2)(d) by eliminating the words "chosen from the list of arbitrators referred to in Section 56" which leaves the Section to read as follows (*** indicates word(s) deleted)

> "(d) the name of the arbitrator, if any, *** that the shipper and the carrier have agreed should conduct the arbitration."

and amend Section 49 (1)(b) by deleting the word "Agency" and adding the (word(s) underlined: (*** indicates word(s) deleted).

> "(b) where no arbitrator is chosen as described in paragraph (a) or the arbitrator so chosen is, in the opinion of the *** parties, unavailable to conduct the arbitration, such other arbitrator, chosen by the Agency from the list of arbitrators referred to in section 56, as the Agency determines is appropriate and available to conduct the arbitration."

SECTIONS 48 AND 51

## Issue:

Documentation in support of Final Offer Arbitration (S.48(2)(a) & (b) and S.51(1)).

## Concern:

It is our concern that decisions be reached in the shipper/carrier negotiation process, with arbitration only occurring in very extreme cases. It could also be that the process would be slowed by attempts to expand the information base. The amendment, from C-126 to C-18, in Section 51 to allow parties to agree to limit information is a good one.

It is our opinion it should be a basic principle that the shipper and carrier exhaust the negotiation process before the shipper asks for Final Offer Arbitration. This should mean that all information supporting their respective positions has been presented and explored, either because it was explained as part of the negotiation presentation, or as elicited by questions for clarification. This information should become part of the submission, and no new information should be admissible. However, it can be anticipated that the arbitrator may want some additional clarification from either party. Should this be the case, a request can be directed by the arbitrator to either party, for explanation or clarification of any item, but not allowing addition of new supporting material.

Such request should be directed to whichever party the arbitrator wishes, but a copy should be sent to the other party. The reply should also be copied to that other party, who should have the right of comment. Reply and comment to be final, with no serial debate.

This process makes the definition of final offer in Section 52 redundant, so we also recommend that part of the legislation be amended so that the carrier final offer is the last written offer made to the shipper prior to the submission made in accordance with Section 48.

To accomplish this we recommend the following changes.

## Recommendation:

Amend Section 48(2)(a) and 48(2)(b) to read, (underlined words added).

> "(2) A copy of a submission to the Agency under subsection (1) should be served on the carrier by the shipper and the submission shall contain
> (a) the final offer of the shipper to the carrier in the matter including all support documentation sent to the carrier,
> (b) the last offer received by the shipper from the carrier in the matter including all support documentation provided by the carrier;

51.(1) The arbitrator shall, in conducting a final offer arbitration between a shipper and a carrier, have regard to the information provided to the arbitrator by the parties in support of their final offers and, *** except for the areas in which the parties have agreed to limit the amount of information to be provided to the arbitrator, such *** clarification as is provided to the arbitrator by the parties at the request of the arbitrator.

(2) In respect of the supporting information, the submission by the shipper shall include the information supplied to the shipper by the carrier, in support of the carrier's final offer; and the information supplied to the carrier by the shipper in support of the shipper's final offer. Should the shipper's submission inadvertently omit carrier support documentation, the carrier may supply missing documents directly to the arbitrator with a copy to the shipper. No information which has not been previously exchanged between the parties will be accepted by the arbitrator.

(3) In respect of the request by the arbitrator for clarification, this shall only apply to clarification of information already submitted. A copy of the request of the arbitrator to either party will be sent to the other party, as will a copy of the reply. Should the second party wish to comment on the reply, one written comment will be accepted by the arbitrator. No further exchanges to be allowed."

Amend Section 52(1)(b) by eliminating the words

"or such other offer as the carrier, within ten days after the service referred to in subsection 48(2), specifies in writing to the shipper and the Agency as the carrier's final offer."

and leave it to read:

"(b) the carrier shall be the last offer received by the shipper from the carrier as set out in the submission to the Agency under subsection 48(1)."

Issue:

Factors to be considered by arbitrator in Final Offer Arbitration ((S.51(2).

Concern:

Section 51 provides a number of factors and considerations which the arbitrator should "have regard to" in conducting a Final Offer Arbitration.

Some of the factors shown do not fulfil the principle that the arbitration should focus on the product and market in question, that is, the private interest being arbitrated.

The suggested rewording of the section is as follows:

(a) In the opening paragraph of Section 51(2) the arbitrator is cautioned to have regard to "whether there is available to the shipper, an alternative, effective, adequate and competitive means of transporting the goods to which the matter relates.

This seems to place undue emphasis on a factor, availability of another carrier. The presence of two carriers is no assurance that competition will occur. Furthermore this still does not prevent a carrier from making a mistake in judgment, for which the shipper might wish to seek arbitration.

To remove the undue emphasis on this factor we recommend the words be moved into a subordinate clause.

(b) In another vein, we would like to strike a balance between recognition of the mutuality of efforts involved in improved productivity. We are referring to Section 51(2)(a) which refers to carrier activities and (b) which lays emphasis on potential efficiencies instituted by the shipper.

The recommended wording attempts to bring these together.

(c) In Section 51 (2)(c), the concept of profitability is introduced, which, in transport, is very difficult to measure for an individual commodity due to the preponderence of joint and common costs. For a railway, which is illustrative of other carriers, profit is included in measures of cost as a component of cost of capital. Specific determination of profitability for an individual movement will be difficult to achieve. Railways themselves use the concept of "contribution" (which is the excess of the freight rate over the economically defined variable cost) to establish a comparison between commodities.

We suggest that it is better to work with the concept of contribution.

(d) Preservation of the economic viability of the carrier and shipper as contained in (d) is very broad and potentially harmful. For example, under any condition where the rail carrier is, on the whole, less than revenue adequate, the criterion could cause the rejection of any Final offer Arbitration case on the basis that the railway cannot be viable in the long term without revenue adequacy. Obviously acceptance of a lower rate proposed by the shipper could be categorized as damaging to the carrier's economic viability.

One of the major problems of the question of carrier viability is that there are significant measurement difficulties. Such difficulties are well illustrated by problems experienced in the United States in defining and measuring railroad revenue adequacy. The criteria they use results in no railroad being found "revenue adequate".

Similarly shipper viability is also generally dependent on factors which extend far beyond the production of any traffic involved in the specific movement likely to be in question. This also picks up the sense of section 51(2)(g).

Extreme care should be taken in introducing broad viability concerns to the question of arbitrating a specific dispute. Again, alternate wording is suggested which may limit concerns to that of the case being arbitrated, and allows paragraphs (d) and (g) to be deleted.

Recommendation:

Amend Section 51(2) to read as follows (underlined words are additions; *** indicates word(s) deleted).

"51.(2) Unless the parties otherwise agree, in rendering a decision, the arbitrator shall have regard to *** all considerations that appear to the arbitrator to be relevant to the matter, including such of the following factors as are relevant:

(a) changes in the cost of providing the transportation service to which the matter relates, *** including consideration of the impact of efficiencies instituted in provision of this service either by the shipper or the carrier.

(b) the *** contribution to constant costs to the carrier from the transportation of the goods to which the matter relates in comparison with the carrier's *** contribution to constant costs from the transportation of other goods."

(c) the ability of the shipper to compete in respect of the traffic in question, having regard to its long term economic costs and to the national and international market conditions that pertain to the goods to which the matter relates.

(d) Old (d) deleted

(d) the quality of the carrier's transportation service to which the matter relates;

(e) the shipping practices of the shipper in connection with the transportation service to which the matter relates, and the effect of those practices on the carrier's operations; and

(old (e) becomes (d), old (f) becomes (e)).

(f) whether there is available to the shipper an alternative, effective, adequate and competitive means of transporting the goods to which the matter relates."

(g) (old (g) deleted)

## SECTION 52

### Issue:

Period of application of arbitration decision (S52)(2)(c)

### Concern:

Issues brought to arbitration may involve a period longer than the maximum presently provided in the legislation. For example a unit train rate may be made for multiple years, with an escalation clause - or the escalation clause issue may be the topic of arbitration.

### Recommendation:

Amend legislation to allow the arbitration decision to reflect the time requirement of the issue at hand, with the provision that parties can agree otherwise.

The wording below (underlined added, *** indicates word(s) deleted) should accomplish this recommendation:

> "(c) unless the parties otherwise agree, be rendered so as to be applicable in respect of the parties to the arbitration for a period of one year or such *** other period as may be appropriate, having regard to the negotiations between the parties that preceded the arbitration."

Issue:

Sharing of cost of arbitration (S.53).

Concern:

Section 53(1) provides that the Agency may fix the fee to be paid to an arbitrator for costs and services in an arbitration proceeding and that each party shall share in the payment of these fees in equal amounts. The assessment of fees in this matter may deter the small shipper from using the arbitration process because of the costs. The complaint with the current Section 23 public interest provision of the National Transportation Act is that it was too costly for some shippers to use. Assessment of fees for final-offer arbitration may produce the same problem. Insofar as "frivolous" applications are concerned, for the small shipper, time and cost of preparation will still be a deterrent.

Recommendation:

It is recommended that Section 53 be amended by the addition of the underlined words, to allow the Agency to adjust or waive the assessment of fees to a shipper where the situation may warrant it. The adjustment or waiving of fees could be based on shipper size with considerations such as traffic volume at issue or in total, or the annual sales of the particular shipper.

> "53(1) The Agency may fix the fee to be paid to an arbitrator for the costs of and the services provided by the arbitrator in the final offer arbitration proceedings and, subject to subsection (2), each party to the arbitration shall share in the payment of the fee in equal amounts, whether or not the proceedings are terminated pursuant to section 55.
>
> In fixing the fee the Agency may exercise its discretion as to the specific amount to be passed to the parties.
>
> (2) A party who requests reasons in writing for the decision of the arbitrator pursuant to subsection 52(4) shall pay the cost of the preparation of the reasons."

Issue:

Provincial government right to request Investigative Action in the Public Interest. (S.59(2)

Concern:

Section 59 has wide application to various modes. Since a major activity of a province is to ensure that the public interest is protected, it maintains an interest in all modes of transportation. Where necessary this includes broad investigation as may occur under Section 59. It is our concern that the present wording of Section 59(2), may not permit provincial initiation of action.

Recommendation:

The legislation be amended to permit a province to request the National Transportation Agency to initiate action under Section 59.

Amending Section 59(2) to read as below (underlined words, added) should accomplish this

> "(2) Where a person or provincial or municipal government has reason to believe
> (a) That the effect of any rate established by a carrier or carriers, or
> (b) That any act or omission of a carrier, or of any two or more carriers."

# SECTION 71

## Issue:

Air services crossing the "demarcation line" (Section 71.(2)).

## Concern:

In order to maintain stability in northern markets, the Bill creates a northern zone in which only carriers with northern licences are permitted to operate. Users in the southern zone are thereby prohibited from using a locally based carrier for their shipments/trips across the "demarcation line" - unless the local carrier also has a northern licence. This discriminates against users in the southern zone as most often local carriers will be best situated to economically and efficiently satisfy the southern users' needs.

Alberta believes that this discrimination can be eliminated without impairing the stability of northern markets by permitting limited charter operations by southern licenced carriers in the northern zone. Alberta would permit any carrier with a southern licence to carry passengers, goods or both on charter flights between a southern and northern point, or between two northern points in the following situations:

1. Passengers or goods are taken on board an aircraft at a point in southern Canada and transported to a point in northern Canada.

2. If the passengers or goods are undertaking a return journey between a southern and northern point, the first point of enplanement must be at a point in southern Canada.

3. In either (1) or (2) above, the passengers or goods could be deplaned and then reenplaned at a northern point, and carried to a different northern point, provided that the same southern based carrier provided the service on each journey sector.

## Recommendation:

Amend 71.(2)(a) by adding the underlined words:

> (a) holds a domestic licence issued under subsection 72.(2) in respect of the points or point; or in respect of all flights not operated pursuant to a published schedule the person holds a domestic licence issued under subsection 72.(1) and the passenger(s) or good(s) to be carried were:
>
> (i) in respect of a one-way journey or the outbound leg of a return journey enplaned at a point not within the designated area, or
>
> (ii) in respect of the inbound leg of a return journey, had previously been enplaned by the person on the outbound leg of the return journey at a point not within the designated area.

## SECTION 72

### Issue:

Northern operators in southern zone (Section 72.(2)).

### Concern:

In order to obtain a licence to operate in the northern zone, subsection 72.(2) requires the applicant to satisfy all the criteria to operate in the southern zone, plus satisfy the "reverse onus" test. Since the successful applicant in the northern zone has met all the criteria necessary to obtain a licence in the southern zone, Alberta believes that licences to operate in the northern zone should automatically include authority to operate in the southern zone.

### Recommendation:

Amend section 72.(2) by adding the underlined words:

> On application to the Agency and on payment of the appropriate fee, the Agency shall issue a domestic licence to the applicant that permits the applicant to operate a domestic service in the area south of the designated area and to operate a domestic service using fixed wing aircraft between points or to or from any point in the designated area if . . .

SECTION 72

Issue:

Application requirements (Section 72.(2)).

Concern:

The current wording of subsection 72.(2) requires the applicant to have a Canadian aviation document and proof of insurability prior to the Agency rendering its "reverse onus" ruling. This means the applicant is being required to make investments even though the Agency might deny its application as a consequence of the "reverse onus" test. To eliminate this potentially inequitable situation, Alberta believes that the Agency decision on the "reverse onus" test should be rendered prior to the applicant being required to demonstrate compliance with the other criteria.

Recommendation:

Amend subsection (a) by incorporating clause (i) into the main body of (a), deleting clauses (ii) and (iii), adding the word "and" at the end of subsection (b), and adding a new subsection (c) as follows:

(c) subsequent to Agency approval pursuant to subsection 72.(2)(b) the applicant establishes to the satisfaction of the Agency that the applicant

(i) holds a Canadian aviation document in respect of the service to be provided under the licence, and

(ii) has prescribed liability insurance coverage or evidence of such insurability in respect of the service to be provided under the licence.

As a consequence of these changes, section 73 must also be amended by deleting the reference to subsection 72.(2)(a)(i) and replacing it with a reference to subsection 72.(2)(a).

Issue:

Weighting of user concerns in determining "reverse onus" (Section 72).

Concern:

Subsection 72.(2)(b) requires the Agency to determine whether the applied for domestic service will lead "to a significant decrease or instability in the level of domestic service provided between points or to or from any point in the designated area." It is Alberta's view that in rendering this "reverse onus" test, the Agency should be primarily guided by the views of the affected communities. This will ensure that even in the regulated zone the legislation will function to the overall benefit of the users.

Recommendation:

Add a new subsection 72.(3) and renumber subsections 72.(3) - 72.(5):

> 72.(3) Where an objection is made pursuant to subsection 72.(2)(b), the Agency shall give primary importance to the views expressed by the local communities in assessing whether the issuance of the licence would lead to a significant decrease or instability in the level of domestic service provided between points or to or from any point in the designated area.

## SECTION 76

### Issue:

Advance notice of market exit (Section 76).

### Concern:

It is Alberta's position that air carriers require flexibility to respond to changing market conditions, and yet users also have a need for advance notice where the withdrawal results in the loss at a specific point of all scheduled air service, or the reduction in scheduled service to less than once per week. Alberta advocates that barriers to exit should be eliminated except in those situations where the carrier's exit would leave a community with no scheduled service, or scheduled service that is offered less than once per week.

### Recommendation:

Add the underlined words to section 76:

> 76. Where a domestic service offering scheduled service has been provided to or from a point not less than once a week during any period of six months or more and the licensee for the service proposes
>
> (a) to discontinue the service, or
>
> (b) to reduce the frequency of the service to less than one flight per week,
>
> and where (a) or (b) will result in the termination of all scheduled service at the point or the reduction of scheduled service at the point to less than one flight per week, the licensee shall give notice of the proposal in prescribed form and manner to such persons as are prescribed and shall not implement the proposal until the expiration of sixty days after the notice is given or until the expiration of such shorter period as may be prescribed or as the Agency may, on application by the licensee, by order specify.

Issue:

Confidential contracts (Section 79.(2)).

Concern:

Alberta is supportive of providing both airlines and users with the flexibility to enter into confidential contracts. This flexibility can be especially important in the development of tourism markets by allowing the airlines and tourism industry to develop innovative methods of risk sharing in new markets. At the same time, the province considers it important, in the interest of maintaining and promoting competition, that the public has access to general information regarding the terms and conditions of confidential contracts. Alberta therefore proposes that the provisions pertaining to confidential contracts contained within Part III of this Bill be included in this section.

Recommendation:

Delete 79.(2) and replace it with the following subsections:

> 79.(2) A confidential contract shall be in writing and shall be filed by the holder of a domestic licence with the Agency within fifteen days after the date on which it is entered into.
>
> (3) A summary of a confidential contract containing prescribed non-confidential information shall, within fifteen days after the date on which the contract is entered into, be published by the holder of a domestic licence in accordance with the procedure for publication of tariffs described in subsection 83(1)(a) and (b).
>
> (4) The Agency may, with the approval of the Governor in Council, make regulations prescribing the information or classes of information to be considered non-confidential for the purposes of subsection (3).
>
> (5) Neither the Agency nor any member, officer and employee of the Agency shall disclose any information contained in a confidential contract that is not contained in a summary published pursuant to subsection (3) to any person who is not a party to the contract.
>
> (6) Notwithstanding anything in this Act, no party to a confidential contract is entitled to request an investigation under section 59 of a matter that is governed by the confidential contract, or submit to the Agency for final offer arbitration under section 48 such a matter, without the consent of all the parties to the confidential contract.

## SECTION 80

Issue:

Regulatory control over fares (Section 80).

Concern:

Section 80 is an attempt to provide safeguards against unreasonable fares and fare increases. Alberta is concerned that the safeguards provided by this section may be ineffective, especially in the non-designated zone. This viewpoint has been reached in consideration of the following points:

1. Historical experience reveals that in a fully regulated environment, the C.T.C. found it difficult to assess the reasonableness of fare increases. In an environment with much less regulation, this assessment becomes even more difficult.

2. The statement of National Transportation Policy (subsection 3.(1)(g)(i)) specifically permits airlines to adjust fares on the basis of market characteristics. This flexibility provides no base criteria for determining whether a fare increase or fare level is unreasonable.

3. Section 80 is only applicable to one type of fare, that which is commonly referred to as the economy fare. However, many domestic passengers find other fare types to be best suited to their requirements. These passengers would not be protected by this section as nothing within it prevents airlines from increasing other fares. By excluding these other fare types, the legislation actually fosters the notion that passengers travelling at other than the economy fare are incremental in nature and need not be protected.

Alberta is also concerned that implementation of this fare review mechanism will require an inordinate share of the Agency's resources. With the government having limited resources to draw upon, Alberta suggests that careful consideration be given to allocating scarce resources to safety enforcement rather than a program of questionable effectiveness.

Recommendation:

Alberta recommends that this section be reworded to provide effective safeguards for all domestic passengers.

If section 80 is successfully reworded to provide effective safeguards for all domestic passengers, then Alberta supports the need for a time limit on the Agency review.

Issue:

Publication of tariffs (Section 83 - 84).

Concern:

In order to facilitate the review of this legislation, a copy of each published tariff should be filed with the Agency, and the Agency, not the carrier, should be specifically charged with the responsibility of maintaining a historical record of tariffs. This historical record should be maintained for at least five years, and not the three years provided for in this legislation, so as to better facilitate the review of this legislation.

The adoption of Alberta's position that all fare types are equally important would eliminate the requirement to specifically identify the basic fare in published tariffs.

Alberta also believes that it is in each carrier's best interests to provide information within its tariffs that will allow the travel industry and consumers to fully understand the tariffs. To regulate this information can increase carrier costs and reduce innovation. In the interest of providing carriers with the freedom to manage, the province sees no requirement for giving the Agency the stated powers.

Recommendation:

Delete 83(1)(b) and (c) and replace with the following:

(b) provide a copy to the Agency of all the tariffs for the domestic service offered by the licensee; and

(c) the Agency shall retain a record of all tariffs for domestic service for a period of not less than five years after the tariffs have ceased to have effect.

Delete Section 84.

Issue:

Subsidies for essential air services (Section 85).

Concern:

Although most communities in Alberta have access to a variety of year round transportation alternatives, some are severely restricted in both their choice of transportation and their availability.

For these communities, air transportation may be the only practical means for personal transport year round or during certain months.

Alberta supports this bill's provision for federal financial support to air services which, though considered essential, cannot be sustained on a purely commercial basis.

Recommendation:

Alberta recommends that the bill be amended to include a more detailed description of: a) the circumstances under which compensation for imposed public duties will be awarded; b) the specific types of domestic services which will be considered; c) the basis for determining appropriate levels of compensation; and d) the mechanism for administering and funding the program(s).

## SECTION 86

Issue:

Provincial participation in the negotiation of international air agreements (Section 86).

Concern:

Air transportation services are an integral part of Alberta's economic fabric. Due to the importance of this relationship, Alberta believes it must be consulted in the process of negotiating international air service agreements.

Alberta urges the inclusion of a legislative obligation for the appropriate federal body to consult with affected province(s) in the course of formulating and negotiating international air agreements. This procedure is well established in other international trade negotiations for goods and services and is essential to the achievement of Provincial regional development programs.

Recommendation:

Add a new subsection 86.(1), as follows, and renumber the existing subsections 86.(1) to 86.(4):

> 86.(1) The Minister shall consult with the Provinces in respect of negotiations between the Government of Canada and any other government, the purpose of which negotiations are to
>
> (a) enter into an agreement to provide air service between Canada and any other country,
>
> (b) to amend an existing agreement to provide air service between Canada and any other country, and
>
> (c) to enforce Canada's rights under an existing agreement.

Issue:

Route award process for international licences (Sections 88 - 89).

Concern:

The Minister is currently responsible for choosing the Canadian carrier that will operate each and every scheduled international route. In recognition of the importance of international scheduled services for regional development, Alberta believes that new procedures are required for carrier selection on these routes. In keeping with the spirit of "Freedom to Move," these new selection procedures should reflect the desire to create both a more competitive environment and one which better reflects user needs and objectives. Alberta suggests that procedures similar to those now in place with respect to the Canada/U.S.A. Regional, Local and Commuter Services agreement be implemented.

It should also be recognized that Alberta's proposal for provincial participation in the negotiation of international air agreements may result in the negotiation of routes for Canada which no Canadian carrier wishes to serve. For example, this situation could arise if a particular route is identified as having good tourist potential for a specific region, but cannot be efficiently or economically served by a Canadian airline. Such routes will not be served unless the legislation provides an opportunity to award the route to a non-Canadian airline. Therefore, a provision to award routes to non-Canadians will enhance competition. Once awarded, Alberta would see these routes operated by the foreign carrier for a minimum of five years. If a Canadian carrier subsequently showed an interest in the route, an amendment to the applicable bilateral agreement could be negotiated permitting the Canadian carrier to also enter the market. Alternatively, the foreign carrier could be supplanted by the Canadian carrier.

Recommendation:

Delete Sections 88 and 89 and replace them with the following:

88.(1) On application to the Agency and on payment of the appropriate fee, the Agency shall issue a scheduled international licence to a Canadian applicant that permits the applicant to operate an international scheduled service between the points named therein if

(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant is a Canadian,

(b) the Agency finds that the proposed service is in the public interest, and

(c) subsequent to the Agency finding of public interest, the applicant establishes to the satisfaction of the Agency that the applicant

(i) holds a Canadian aviation document in respect of the service to be provided under the licence, and

(ii) has prescribed liability insurance coverage or evidence of such insurability in respect of the service to be provided under the licence,

88.(2) On application to the Agency and on payment of the appropriate fee, the Agency shall issue a scheduled international licence to a non-Canadian applicant that permits the applicant to operate on international scheduled service between the points named therein if

(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant

(i) has been designated by a foreign government or an agent thereof to operate an air service under the terms of an agreement or arrangement between that government and the Government of Canada;

(ii) holds, in respect of the air service, a document issued by a foreign government or an agent thereof that, in respect of the service to be provided under the document, is equivalent to a scheduled international licence;

(iii) holds a Canadian aviation document in respect of the service to be provided under the licence; and

(iv) has prescribed liability insurance coverage or evidence of such insurability; or

(b) the Agency is satisfied that no Canadian airline is prepared to offer service between the points named therein; the Agency finds that the proposed service is in the public interest; and subsequent to the Agency finding of public interest, the applicant establishes to the satisfaction of the Agency that the applicant

(i) holds a Canadian Aviation document in respect of the service to be provided under the licence; and

(ii) has prescribed liability insurance coverage or evidence of such insurability in respect of the service to be provided under the licence.

88.(3) Licences awarded pursuant to subsection (b) shall be subject to review after a minimum of five years.

89. In determining the public interest pursuant to subsection 88.(1)(b) and 88.(2), the Agency shall give primary importance to the views expressed by the communities that will be affected by the proposed service.

## Issue:

Cancellation of international licences; "Use it or Lose it" (Section 92).

## Concern:

Because entry into international scheduled markets is restricted by international air agreements, this affords the authorized carrier a significant degree of protection. In return for this protection, Alberta believes that these carriers' authority should be subject to a "use it or lose it" provision. Therefore, Alberta believes that the Agency should only have the power to cancel international scheduled licences, not suspend them.

Alberta also strongly believes that inadequate use of the authority should be grounds for cancelling an international scheduled licence. Inclusion of inadequate use sends a clear message to the designated carrier that, in return for restricting entry, the carrier accepts an obligation to provide adequate service to the public. If the carrier fails to do so, it risks losing the authority to a carrier that is prepared to provide better service. In assessing the adequacy of the service, the Agency should give primary weight to the views of the affected communities.

Where the Agency cancels an international scheduled authority, it should be required to immediately invite all eligible carriers to apply to serve the vacant route, and render its decision on the applications in a timely fashion. This will minimize the disruption of service. A carrier that lost the route authority would be eligible to reapply.

## Recommendation:

Amend 92.(1) by the addition of the underlined words and adding a new subsection (c); insert a new subsection 92.(2); renumber the existing subsection 92.(2):

> 92.(1) The Agency may, on its own motion or in response to a complaint from any person, suspend or cancel the scheduled international licence of any person where the Agency has reasonable grounds to believe that, in respect of the service for which the licence is issued, the person
>
> (a) ceases to have the qualifications necessary for the issuance of the licence;
>
> (b) has contravened any provision of this Part or any regulation or order made under this Part; or
>
> (c) has failed to provide adequate service between the specified points.
>
> (2) In assessing the adequacy of the service pursuant to subsection 92.(1)(c), the Agency shall give primary weight to the views of the affected communities.

(3) Where the Agency cancels the scheduled international licence of any person pursuant to subsection 92.(1), the Agency shall immediately invite persons to make application to serve the route pursuant to section 88.

## SECTION 94

**Issue:**

Non-scheduled international licences (Section 94).

**Concern:**

The criteria for obtaining a non-scheduled international licence includes a public interest test. Alberta believes that it is inconsistent with the objectives of this legislation to continue to require that these carriers must first demonstrate a public need in order to obtain a licence. Elimination of this test also makes it possible to delete the time limit on decisions pursuant to subsection 94.(2).

**Recommendation:**

Delete the underlined words from subsection 94.(1) and delete subsection 94.(2):

> 94.(1) On application to the Agency and on payment of the appropriate fee, the Agency shall, where it determines that it is in the public interest to do so, issue a non-scheduled international licence to the applicant if the applicant establishes in the application to the satisfaction of the Agency that the applicant . . .

## SECTION 102

Issue:

Agency powers to create regulations (Section 102).

Concern:

Alberta has some concern that the proposed Agency powers are too broad in scope and thus may not provide the stable environment required by the air transportation industry. Alberta's specific concerns are as follows:

1. Subsection (a) allows the Agency to amend the location of the line separating the regulated and deregulated zones. Alberta believes that the movement of this line would be a significant event that has the potential to dramatically alter the intent of this legislation. Thus, in Alberta's view, this line should only be changed by an act of Parliament.

2. Subsection (g) would permit the Agency to impose regulatory controls on contracts between air carriers and third parties. Alberta considers that such controls are inconsistent with the desire to place greater reliance on the marketplace; that imposition of these controls would reduce management flexibility; and that these controls would put air carriers in the awkward position of having to impose and enforce conditions which the carrier itself does not wish to impose. Should it be considered too restrictive to eliminate all regulatory controls of contracts between carriers and third parties, Alberta would suggest that the subsection at least be amended to exclude confidential contracts entered into pursuant to Section 79. Failure to at least exclude confidential contracts would give the Agency the power to make confidential contracts ineffective.

Recommendation:

Delete subsection (a) in its entirety and either delete subsection (g) in its entirety or exclude confidential contracts.

## SECTION 109

### Issue:

Transitional considerations (Section 109).

### Concern:

This section allows for a transition period during which all authorizations, terms and conditions applicable to C.T.C. licences will continue to have effect for up to twelve months. Excluded are those authorizations, terms and conditions that are no longer provided for in this Bill. Therefore, as a consequence of Alberta's earlier recommendation (Section 96) that international charter licences be governed solely by the international air service agreements, the current authorizations, terms and conditions on C.T.C. Class 9-4 licences (international charter licences) should not continue in effect during the transition period.

### Recommendation:

Insert the underlined words in subsection 109.(2)(c), add a new subsection 109.(2)(d) and renumber the current subsection 109.(2)(d):

> 109.(2)(c) A licence or permit for a Class 8, Class 9-2 or Class 9-3 licence referred to in paragraph (1)(c) shall be subject to all the authorizations, terms and conditions applicable to the licence or permit on the day immediately before the coming into force of this section; and
>
> 109.(2)(d) A licence or permit for a Class 9-4 licence referred to in paragraph (1)(c) shall not be subject to any authorizations, terms or conditions applicable to the licence on the day immediately before the coming into force of this section.

Issue:

Cost of Capital in Determination of Variable Cost (S.112(4)(b).

Concern:

The proposed minimum rate legislation contained in Section 113 is in most respects similar to the Railway Act. While Alberta believes that the concept of a minimum rate rule is economically sound, it is concerned about the manner in which variable costs are determined for purposes of this section of the Act. At present, in computing the costs for the purposes of minimum rate determinations, the Agency must include the cost of capital, and use CP Rail's cost of capital for CN Rail.

The cost of capital is not always a relevant cost in determining minimum rate requirements. Capital costs of equipment or infrastructure in backhaul or excess capacity are not relevant. In fact it can be argued that some so-called "overhead" expenditures are also not relevant. In Ex Parte No. 355, the Interstate Commerce Commission defined costs for minimum rate proceedings to consist of directly variable costs. Directly variable costs were defined by the Interstate Commerce Commission selecting relevant components of general average variable costs. No capital costs were included.

Bill C-18 perpetuated the use of CP Rail's capital costs by CN Rail. Supposedly this provision was originally incorporated in the Railway Act because CP felt it would be unfair to have to compete with CN's lower capital costs. Singling out capital costs for this special treatment is wrong for two reasons:

1. Experience has shown that overall CN is the higher cost carrier. The recent decision to allow CN road property investment coefficients which are fifty percent higher than CP's is evidence of this.

2. It is illogical to single out one cost item for this treatment. Using the same logic as is implicit in this Section, CP should have to use CN's road property investment coefficients in costing their services.

Recommendation:

It is recommended that S.112(4)(b) be deleted, with the question of the appropriateness of the inclusion of cost of capital to be included in the review suggested in our Recommendation for Development of Costing Guidelines (new Section in Part VIII).

Issue:

Requirement for class rates, classification and maintenance of a tariff system (S.114-118).

Concern:

It is a concern that there is no clear cut assurance that the railway pricing structure in Canada will continue to have a straightforward base position from which the small and medium size shipper will be able to operate.

While certain competitive aspects will allow much use of the new concept of confidential contracts, there will still remain a considerable group who will continue to use the base system.

In this system there have been three basic elements. These are published tariffs, a freight classification (not the commodity code) and class rates.

Small business, not often in major negotiation with rail carriers need the ability tariffs provide to ascertain rates available. All rail users will need the classification standard rules developed with much deliberation over many years, and without class rates the requirement of Section 114 will be violated, or traffic delayed.

Recommendation:

It is therefore our recommendation that a system of tariffs be maintained, published and available for all, and that system ensure that special arrangements are covered by tariff. As well the Canadian freight classification, tariffs of class rates and a tariff index, should be maintained.

To accomplish this the following amendments to Sections 114 and 118 are recommended:

Add a new section which will read, much as Section 268 of the Railway Act did, as follows:

(1) Each company shall maintain the freight classification that shall govern its tariffs of tolls and shall maintain such tariffs of tolls as will, in conjunction with a freight classification, provide published tolls applicable between any two points on its line in Canada.

(2) Any freight classification and exception thereto in use in the United States may, subject to any regulation, order or direction of the Agency, be used by the company with respect to traffic to and from the United States.

Section 115 should be amended by eliminating the words "on the request of a shipper and, may, in any other case" and by adding the words underlined (elimination marked by ***).

> "115. (1) A railway company shall *** issue a tariff and a tariff index in respect of the transportation of traffic or provision of special arrangements in connection therewith, on any railway operated by the company."

Add the words underlined to Section 116(1)(b).

> "(b) retain a record copy of every tariff issued by it for a minimum period of five years from the date of cancellation thereof."

Issue:

Availability of information on traffic flow, revenues and operating data. (S.120)

Concern:

With the advent of confidential contracts the amount and utility of tariff information will diminish. In addition, if contract information is excluded from sources such as Statistics Canada, this data will be of minimal use.

The competitive line rate mechanism involves the use of railway revenue and mileage data in the calculation of the rate. Shippers must retain access to this type of information so as informed decisions may be made as to whether the mechanism should be employed.

Of course, specific information as to contracts will not be released, and the workings of the Act governing Statistics Canada will ensure that the information is sufficiently disguised.

Recommendation:

Statistics Canada reports should include information derived from confidential contracts, and the information should be sufficiently detailed such that the statistical data is complete and useful while preserving the confidentiality of individual shippers. This information should include railway revenue and mileage data so as shippers may estimate competitive line rates. Most importantly, this information should be provided in a timely manner.

This will be assisted by adding a new sub-clause to Section 120 reading:

> "Nothing in this section is to be applied so as to prevent provision of information on movements and revenues involving traffic covered by confidential contracts, as a part of the data to be supplied by Railways as required by this Act or any other Act."

Issue:

An agreed charge public interest investigation is commenced by complaint to the minister (S.127).

Concern:

It is our concern that the various rate-making procedures, now brought together in one Act, should operate under similar processes.

There would appear to be sufficient protection for the parties concerned in Section 127, under the Sections which deal with Mediation, Final Offer Arbitration, and Public Interest Investigation.

Recommendation:

It is recommended that Section 127 be deleted in its entirety.

## SECTION 134

### Issue:

Competitive Line Rate requirement to use nearest interchange in establishing continuous route (S.134(7)).

### Concern:

Under the Competitive Line rate concept the shipper must identify the nearest interchange in the general direction of the movement when he is designating the route from origin to destination. Both the local carrier's behaviour and the level of service obtained by the shipper will be influenced by the interchange location. In general, if the distance for the Competitive Line Rate is relatively short, the local carrier will be less inclined to view the Competitive Line Rate positively. In addition the service level of the connecting carrier at the nearest interchange might not be appropriate from the shipper's perspective.

The requirement to use the "nearest" interchange may unnecessarily restrict rate negotiations with the local and connecting carriers. Allowing the location of the interchange to be part of negotiating relationships with the local carrier would enhance the possibility of positive negotiations between the shipper and the local carrier in respect to service considerations and carrier revenue needs. It could also make the difference in establishing a competitive line rate which is compensatory and one which is not.

### Recommendation:

Legislation should be amended to alter the requirement for use of the nearest interchange to allow for an interchange as agreed upon by the shipper and the local carrier, with the nearest interchange to apply if agreement cannot be reached and unless subsequently otherwise ordered by the Agency.

This can be accomplished by eliminating Section 134(7); and adding the words underlined to Section 134(2) leaving it to read as follows:

> "Section 134(2) Subject to this section and Section 135, where a shipper has access to the lines of only one railway company at the point of origin or of destination of the movement of the traffic of the shipper and a continuous route between those points is operated by two or more companies, the local carrier serving the shipper at the point of origin or destination, as the case may be, shall on the request of the shipper, establish a competitive line rate applicable to the movement of the traffic to or from the point of origin or destination, whichever is served exclusively by the local carrier, to or from, unless otherwise agreed by the shipper and local carrier, the nearest interchange with a connecting carrier."

and, eliminating the word "nearest" from Section 136(c) leaving it to read as follows:

> "Section 136(c) the designation of the interchange."

Issue:

The competitive line rate concept may not be available for use where carriage via a U.S. carrier is contemplated for a shipment from a Canadian origin to a Canadian destination (S.134(5) & (6).

Concern:

It is Alberta's concern that the legislation as worded, will block the opportunity to truly bring competition to bear on local locations across the south of Canada. It is felt that although certain interpretations could be placed on the words "cost-effective" and "considered reasonable" in Section 134(5), there is sufficient leeway for them to be used by a local carrier to delay and perhaps even prevent establishment of a competitive line rate to a connection with a U.S. carrier on Canada to Canada traffic.

One of the basic thrusts of the new Act, and particularly the concepts of confidential contracts, competitive line rates and terminal running rights is to open up competitive opportunities for shippers. It should extend to all opportunities of developing competitive leverage.

Recommendation:

It is Alberta's recommendation that clauses 134(5) and 134(6) be deleted in their entirety.

## SECTION 135

Issue:

Distance for competitive line rate (S.135(4)).

Concern:

The principle of the connecting line rate is to expand the advantages of competition to isolated locations. The limitations on distance holds the potential to deny use of this principle where circuitous routing exists, and rail alternatives are limited.

Recommendation:

Legislation be amended to allow the Agency discretion to extend length of a Competitive Line Rate in appropriate cases.

To accomplish this, it is recommended that Section 135 be amended by adding an additional sub-section following Section 135(4).

> "On application of any shipper, the Agency may determine that, in any particular case, where the portion of a movement of traffic in respect of which a shipper requests a competitive line rate exceeds fifty per cent of the total number of miles over which the traffic is moved by rail or five hundred miles, whichever is greater, and the Agency is of the opinion that an efficient and economic interchange with a connecting carrier is not located within those limits, the portion of the movement of traffic in respect of which a shipper requests a competitive line rate shall be deemed for the purposes of this section to be within those limits."

## SECTIONS 135 AND 137

### Issue:

Possibility of multiple Competitive Line Rates for the same physical movement on a local carrier. (S.135 & 137)

### Concern:

As presently worded a shipper who is moving product to several destinations, would have different Competitive Line Rates to connect with each connecting line rate. The creation of a complicated listing of rates with little monetary difference should be avoided.

### Recommendation:

Amend legislation in such a fashion as to allow one Competitive Line Rate where multiple destinations are involved on one type of movement.

It is recommended that a new paragraph be added in Section 135 reading

> "Where a shipper requests a local carrier to establish a Competitive Line Rate for traffic which involves movements to multiple destinations on the connecting carrier(s), the local carrier may offer and publish a single Competitive Line Rate for all such movements."

and a new paragraph to Section 137 reading

> "Where a shipper requests the Agency to establish the amount of Competitive Line Rate for traffic which involves movements to multiple destinations on the connecting carrier(s), the Agency may establish a single Competitive Line Rate for all such movements."

## SECTION 137

### Issue:

Interswitching zone to be used in Competitive Line Rate calculation (S.137(1)(2).

### Concern:

The calculation of the Competitive Line Rate is required to use as one factor the interswitching rate determined pursuant to paragraphs 153(5)(b). Both Section 137(1)(a) and Section 153(5)(b) use wording that identifies the interswitching rates/charges will have a distance zone pattern.

Interswitching rates, as with all other rates, must be compensatory, and to that extent will have some cost basis. Therefore, for the longer distance zones, particularly where that distance involves the movement out of yard switching and into road service, there is a strong likelihood that the interswitching rate/charge will be higher for longer than for the shorter zones.

With this in mind, the most appropriate rate is that designated for the shortest zone.

### Recommendation:

The legislation should be amended so that the Competitive Line Rate formula uses only the shortest distance zone.

It is recommended that Section 137(2) be amended by the addition of the words underlined:

> "(a) an amount equal to the rate prescribed or determined pursuant to paragraph 153(5)(b), as modified in accordance with Section 153(6), that is applicable to the shortest distance zone established pursuant to that paragraph and that is prescribed for the purposes of this subsection, and"

## SECTION 137

**Issue:**

Determination of a competitive line rate based on other local carrier rates for "same or similar" movements (S.137 (4)(5)

**Concern:**

Where a Connecting Line Rate is published in a confidential contract, the establishment of a CLR could be frustrated by the absence of competitive "same or similar" movements, under substantially similar conditions on the local carrier; or the absence of the same or substantially similar traffic on all of the local carrier lines. Even though Section 136(a) and Section 142 would enable the Agency to establish the rate, these are time consuming.

It is possible that there will be "same or similar" movements on another carrier in Canada and the expansion of the source area could improve the process. The competitive line rate formula is quite complicated as it stands, so simplification through elimination of the "local" qualification would be useful.

**Recommendation:**

Sections 137(4) and 137(5) should be amended by removing the word "local" in front of "carrier".

## SECTION 137

Issue:

A competitive line rate must be compensatory (S.137(8) ).

Concern:

As a matter of basic principle the legislation requires rates to be compensatory. However in the competitive line rates approach there are alternate methods for creating a rate.

Where a competitive line rate is not compensatory, there should be a feedback loop through the different approaches, treating them as options, before establishing a "compensatory" level as the competitive line rate.

Thus where a rate level required under Section 137(3) is found to be non-compensatory, the next action would be to develop a rate level under Section 137(4). Where that level fails, then a rate level would be formulated under Section 137(5). If that proved to be non-compensatory, then, and only then, would the Competitive Line Rate be established at the "compensatory" level.

Our concern is that the question as to what is a "compensatory" level can be debated and argued interminably, all the while delaying the competitive line rate process. This proposal establishes more chance of making a rate under the formula devised rather than through a complicated costing operation.

Recommendation:

Legislation be amended to permit this "feedback" to operate, thus reducing the potential for delay.

Section 137(8) could be amended to read

> "Where in any case, a competitive line rate, as determined in accordance with Sub-paragraph (3) is non-compensatory, a competitive line rate shall be determined in accordance with Sub-paragraph (4). Where a competitive line rate, as determined in accordance with Sub-paragraph (4) is non-compensatory, a competitive line rate shall be determined in accordance with sub-paragraph (5). Where a competitive line rate determined in accordance with Sub-paragraph(5) is non-compensatory, or where the Competitive Line Rate has been determined in accordance with an alternative method established in accordance with Section 142, is non-compensatory it shall, in the manner determined by the Agency be increased to such a level as to become compensatory.

Issue:

Railway must provide piggyback service to all common carrier truckers on an equal basis (S.144 (5) and (5)(2)).

Concern:

In the past, by amendment to the Railway Act (Section 265(8), the Railways were constrained to give common carrier truckers the same piggyback service at the same price as they might give to trucking companies under their control. Bill C-18, Section 144(5) has extended that principle to "Motor Vehicles, trailers or containers" provided by the railway company itself. It is our concern that this addition would inhibit railway development of multi-modalism, interfere with operation of the railways own business, and stifle competition. Furthermore it holds the potential for preventing rail confidential contracts which make use of intramodal equipment. And, finally the present wording may negatively affect opportunities to use railway intermodality in attempts to rationalize the rail system through branch line abandonment.

Recommendation:

The legislation be amended to return to the basic principle of Section 265(8) of the Railway Act.

This can be accomplished by removing "By itself" from Section 144(5) and (5)(a).

Issue:

Provincial government right to request an inquiry relative to construction of railway track in close proximity to another line or track (S.148(1)).

Concern:

The basic purpose of section 148 is the efficient use of land and capital and the avoidance of unnecessary track infrastructure.

This is quite commonly an interest mainly of a municipality, but to the extent a route may involve provincial interests, it is our concern that the province be in a position to initiate a request for an inquiry.

Recommendation:

The legislation be amended to include the province as a party allowed to place a request before the Governor-in-Council.

This may be accomplished by adding the underlined words to section 148(1).

> 148 (1) The Governor in Council may, on the application of any railway company, municipality or person, government or agency thereof interested, or of the Governor in Council's own motion, direct the Agency to conduct an inquiry and make a report on whether it is in the public interest to avoid the construction of:
>
> (a) one or more new railways close to or in the neighbourhood of an existing railway;
>
> (b) two or more new railways close to or in the neighbourhood of each other.

Issue:

Interswitching charges and absorption (S.153(4) & (5)).

Concern:

The establishment of a larger interswitching area is a part of the underlying principle of the new legislation to increase intra-modal competition.

To the extent that any part of the charge for interswitching is directly passed on to the shipper, the involved intramodal competition is lessened. In this respect it should be noted that the carriers normally absorb 100% of interswitching charges on both competitive and non-competitive traffic.

In support of the principle of expanded intra-modal competition, it is our belief that no part of interswitching charges should be passed on to the shipper.

Given this principle, the amount of the interswitching charge is primarily a matter between the carriers, excepting where the level might be set in a fashion designed to interfere with competition.

Interswitching charges are a factor within the very complicated competitive line rate formula in S.137. To avoid complicating the Competitive Line Rate further the interswitching charge should be standard across Canada, and published in an open tariff. As well to institute the Competitive Line Rate provision as soon as possible, there should be interim interswitching charges established.

Recommendation:

It is recommended that legislation be amended in such a manner that

1. Carriers will arrange to decide on and publish a standard level of interswitching rate on the basis of such criteria including distance zones as may be established by the Agency. Such interswitching rate is to be applied at all interchanges established in accordance with Section 153(1).

2. Such rates should be the same at any interchange in Canada.

3. No portion of interswitching charges will be passed on to shippers.

4. Such interswitching rates will be subject to the review of the Agency.

5. In order to ensure immediate effectiveness, the Agency will establish an interim level of interswitching rates to apply until the railway level is developed and approved. (It is also necessary for use in connection with competitive line rates).

To accomplish these the following amendments are recommended.

Amend Section 153(4) by eliminating present wording and substituting

"No portion of the interswitching rate prescribed under paragraph 5(b) will be charged or otherwise passed on to the shipper."

Amend Section 153(5) to read as follows (underlined wording added, *** indicates word(s) deleted).

(5) The Agency may, with the approval of the Governor-in-Council, make regulations
(a) prescribing the terms and conditions subject to which the interswitching of traffic may occur;
(b) subject to subsection (6), prescribing *** the manner of determining a rate, which will be the same at all interchanges in Canada, to be charged for interswitching traffic and, for that purpose, may establish distance zones;
(c) ***
(d) prescribing, for the purposes of sub-sections (2) and (3), a greater distance from an interchange than thirty kilometers.

Amend Section 153(6) by eliminating the words "rates or"

(6) In prescribing *** the manner of determining rates pursuant to paragraph (5)(b), the Agency shall take into consideration any reduction in costs that, in the opinion of the Agency, results from moving a greater number of cars or from transferring several cars at the same time.

Add a new Sub-section to Section 153 reading

"upon this Act coming into force, the Agency will issue, within 30 days, an interim order establishing the rate which will apply for interswitching. Such an order will remain in force until approved carrier interswitching rates are published."

Add a new Section following Section 153

"Carriers will develop, in the manner prescribed by Section 153(5)(b), interswitching rates to cover interswitching services at all interchanges in Canada, as established in accordance with Section 153(1).

Such rates when developed, will be presented to the Agency for review, and upon approval will be published."

Issue:

Distance for interswitching (S.153(2)).

Concern:

Alberta has a concern that setting a new limit based strictly on a mileage basis will create an environment that is just as inflexible as the current limit, and could create the same problems in the future as we are facing today.

In an earlier paper, the province advanced a proposal for expanding interswitching which it is believed will not only be flexible in meeting shipper needs but will also be easily accommodated in railway operating procedures. Alberta proposed that the new interswitching limits be based on railway "switching limits" which is an area of carload pick up and delivery service provided by a line haul carrier to its own customers. The switching limit concept has no strict mileage identification but is based on railway operating procedures which are adjusted when necessary to meet industrial expansion and customer service needs.

Alberta believes that incorporation of the switching limit application in concert with the 30 kilometer interswitching limit will meet the current need for expansion of intramodal competition and provide for more flexibility in the future.

Recommendation:

Alberta recommends that the provision to increase interswitching be based on a limit of 30 kilometers or railway switching limits, whichever is greater.

To accomplish this it is recommended that the underlined wording be added to Section 153(2)

> "(2) Where the point of origin or of destination of a movement of traffic is within railway switching limits or, a radius of thirty kilometers whichever is greater, or a prescribed greater distance from an interchange, no company shall transfer that traffic at that interchange otherwise than in accordance with the terms, conditions and rate prescribed pursuant to subsection(5)."

## SECTION 157

Issue:

Exclusion of certain overhead costs from calculation of actual costs of a rail line. (S.157 (3) )

Concern:

It is our concern that, while some overhead factors are relevant for different costing applications such as rail line subsidy, they may not be for others, such as abandonments. At this time, it may be too broad to simply exclude their use from the entire division.

We have proposed development of costing guidelines wherein the correct factors for each end use would be identified. If such a review is going to be undertaken, we recommend this exclusion should be deleted.

Recommendation:

Subject to the proviso that the cost review referred to is going to occur, the deletion of Section 157 (3) is recommended.

## SECTION 159

### Issue:

Part III, Division II makes a differentiation between branch lines and other lines (S.159 (3)).

### Concern:

In continued attempts to develop an economic, efficient and adequate network of rail lines there will be many needs to rationalize lines other than branch lines. In some case in the past there have been arguments as to what is a branch line. It is our concern that the various new approaches for assistance in decision making, including subsidy and transitional funding should be just as available for solutions applicable to any type of track, so long as they satisfy the criteria for the individual program.

### Recommendation:

Legislation should be amended by changing the scope of Section 159(3) to read:

> "Sections 160 to *** 180 apply, with such modifications as the circumstances require or as are made by the regulations under paragraph 181 (1) (a), in respect of the abandonment of the operation of every line of railway of a railway company other than a branch line, in the same manner and to the same extent as they apply in respect of the abandonment of the operation of the branch line."

## SECTIONS 160 AND 161

### Issue:

Information to be supplied in a notice of intent to make an application for abandonment (S.160 (2) ) and provincial government right to oppose an application for abandonment of operation of branch line (S.161).

### Concern:

It is a concern that all affected parties involved in the issue of line abandonment should have access to sufficient information on which to base decisions. The information should be available as early in the process as possible as it may not only assist a person who wishes to oppose an application to better understand the situation, it may also make it easier to attract a prospective purchaser or substitute rail operator.

It is also a concern that, while under Section 36 the province has the right to appear and be heard, it does not have a right to oppose abandonment where necessary.

### Recommendation:

To this end we recommend that the information requirement be expanded to include Cost of Rehabilitation, Cost of Upgrading, Future Capital Requirements, and Net Salvage Value.

To accomplish this Section 160 (2) should be amended by the addition of the words underlined.

> "(2) A notice referred to in subsection (1) shall be given in the prescribed form and manner to the Agency and to the prescribed persons or classes of persons and be accompanied by *statements of the Cost of Upgrading, Future Capital Requirements, Net Salvage Value, and* statements of traffic, costs and revenues of the company attributable to the branch line in each of the prescribed financial years of the company and of the traffic moving over the line in each of those years."

And we recommend that legislation should be amended to ensure the province has the right to oppose abandonment.

This can be accomplished by adding the underlined words to Section 161

> "Any person, *municipality, government body or agency thereof* may oppose an application for the abandonment of the operation of a branch line by filing with the Agency, not more than sixty days after the date of the notice given under subsection 160(5), a written statement setting forth the grounds related to the matters to be considered under section 167 on which that person, *municipality, government body or agency thereof* opposes the application."

Issue:

Process involving line rationalization be adjusted to allow the use of transitional funding to be an alternative to line retention.

Concern:

The single most important aspect of the proposed abandonment process is the provision for transitional funding contained in Section 175 of the Bill. The difficulty is that it is considered after the abandonment decision rather than as part of the abandonment process. By making the negotiation of transitional funding part of the abandonment process affected parties would have a third option to a proposed abandonment. As the process as now envisioned, a person faced with a notification of intent to abandon a line (S.160) has two choices; accept or oppose the application. By incorporating into Section 161 the opportunity to negotiate transitional funding, those who might otherwise oppose the abandonment because it adversely affects them would have a reasonable alternative.

Recommendation:

It is therefore our recommendation that, immediately after a railway company has given notice of intent to apply for abandonment, that any person may approach the Agency, or the Agency may decide to act of its own volition, to establish the terms and conditions, available under Section 175, that could be applied to the line in question.

To accomplish this we recommend a new Section, immediately in front of present S.161 (this action should take place before a person files in opposition) worded as follows:

> "Upon notice being given under Section 160 (1) any person, municipality, government body or agency thereof, may make a request to the Minister to proceed with activities to establish the terms and conditions for transitional funding in accordance with Section 175.
>
> Where request is made under this Section, notice period of Section 160 is extended to 120 days."

## SECTION 165

Issue:

Parties who may request variance for date of abandonment (S.165 (2) ).

Concern:

The question of when a branch line may be abandoned may impinge on the activities of the local, regional or provincial governments. As presently worded only a shipper may apply for a variance of the date fixed for abandonment.

Recommendation:

Legislation be amended by the addition of the underlined words in Section 165 (2)

> "(2) The Governor-in-Council may, by order made on the application of a shipper, or municipal or provincial government body or agents thereof vary the data fixed in an order made under subsection (1), as varied by any previous order made under this subsection, before that date by fixing a later date, not later than the day that is five years from the date of the order made under subsection (1) or the day of the last variation order made under this subsection, whichever day last occurs, where the Governor-in-Council considers that"

SECTION 165

Issue:

Wording of Section 165 may make it impossible for the Governor-in-Council to vary the date of abandonment (S.165 (2) (c) ).

Concern:

An application of a party to vary the date of abandonment should have to meet only one of the criteria, not them all. Because of the word "or" in paragraph (c) the criteria are conjunctive not disjunctive.

Recommendation:

Legislation be amended to allow the criteria to operate properly and independently, by changing the word "and" to "or".

This amendment is required in Section 165 (2) (c), with the word "and" being deleted and word "or" being inserted in its place as below. (*** indicates word(s) deleted, and word(s) underlined added.)

> "(c) the abandonment of the operation of the line or segment would have a major impact on shippers; *** or"

## SECTION 167

### Issue:

Matters relevant to retention of a line in the Public Interest. (S.167)

### Concern:

Factors listed to be considered are incomplete without considering what costs might be involved in rehabilitation or future capital costs, where the line might be retained.

### Recommendation:

Amend Section 167 by the addition of a new factor reading:

> "the cost of rehabilitation, and the amount of future capital that might be required to maintain the line;"

## SECTION 173

### Issue:

Availability of information to participants in abandonment proceedings. (S.173(4))

### Concern:

In the process of rationalization of railroad lines it is our earnest endeavor to ensure that the best possible decision is reached. In this respect it is imperative that information availability be maximized, subject only to reasonable protection of confidentiality, and in particular not releasing information that the statutes prevent, e.g. confidential contract information.

Under Section 170, the Agency is able to secure information which will give them a broader understanding of the transportation environment surrounding a branch line up for abandonment. Under Section 173 they are permitted, with some restrictions to release this information to support certain recommendations they may make.

This same information would enable participants to better understand the scope of the problem, and come up with better solutions to their problems, were they to have it in time for consideration in the process, rather than after the recommendations have been published.

### Recommendation:

It is Alberta's recommendation that the legislation be amended to allow release of such information to the parties involved in an abandonment proceeding, during such proceeding.

To accomplish this we recommend the addition, to Section 173(4) of the underlined words.

> "Notwithstanding subsection 170(2), the Agency may, to facilitate discussion in proceedings as are required under Section 164, supply to participants in such proceedings, or, in support of any recommendation made under this section, publish, any traffic figures furnished to the Agency, as required under paragraph 170(1)(b), whether or not the figures relate to a branch line for which an application has been filed, but the Agency shall, so far as practicable, protect information that is by its nature confidential from being made available for use by any person other than the company that furnished the figures."

## SECTION 173

### Issue:

When administering subsidies, the Agency should also consider lowest cost options (S.173(1)).

### Concern:

It is our concern that at any time, even during the administration of subsidies, the Agency should keep before it, that there may be a better, lower cost, more efficient way of maintaining the service. For example, perhaps a recommendation to consider alternate rail line ownership would be in order.

### Recommendation:

It is recommended that Section 173(1) be amended by the addition of a reference to Section 178, as shown underlined, below

> "173 (1) In performing its duties under sections 163 to 172, and 178 the Agency may make recommendations to railway companies, regardless of whether the railway companies are parties to an application, respecting"

## SECTION 174

### Issue:

Obligation of short line railway to comply with conditions of Acts other than the National Transportation Act. (S.158(4)(b) and S.174(6)(b)) and federal or provincially incorporated railway company must be able to make offer to operate line or segment (S.174(1)).

### Concern:

The development of short line railways has been forwarded as a method to retain railway operation in a region where a national railway finds operations uneconomical. The short line needs flexibility to survive, and must have greater freedom to take innovative steps of all kinds to develop the staying power that will protect the communities interest in rail service. It may be that operating under provincial jurisdiction will provide needed flexibility, and this should not be prevented.

Since some of the opportunities under the National Transportation Act may be very useful, it is hoped to see the lines remain under federal jurisdiction in this respect. However other areas of federal legislation carry powers to restrict freedom to innovate.

### Recommendation:

To ensure maximum flexibility it is recommended that Section 174(1) be amended by adding the underlined words and Sections 158(4)(b) and 174(6)(b) be amended by the deletion of the words "or any other". To improve the subsequent wording also eliminate the words "of Parliament". The resultant paragraphs will read: (*** shows word(s) deleted)

> "Section 158(4)(b) the company to which the line or segment is conveyed shall be deemed to have assumed all the obligations under this *** Act *** in respect of the operation of the line or segment unless those obligations are subsequently lawfully terminated.
>
> Section 174(6)(b) the railway company to which the line or segment is transferred shall be deemed to have assumed all the obligations under this *** Act *** in respect of the operation of the line or segment;
>
> Section 174(1) An offer to acquire a branch line or a segment thereof by purchase, lease or otherwise in order to continue to operate the line or segment may be made to the railway company that operates the line or segment by any other railway company, whether incorporated federally or provincially, that is authorized to operate the line or segment in either of the following periods:"

Issue:

Need to guarantee advance funding expended to create alternate rail lines.

Concern:

It is a concern that the Bill appears to consider short line railways only as an alternative to abandonment. This ignores the potential savings created by having a subsidized line operated by a railway rather than by CN or CP. Therefore, the Government of Alberta has recommended that the Agency be given the responsibility to minimize subsidy costs by expanding the scope of their duties under Section 173(1). Consequential to this change would be a change to permit payment to short line railways. Such compensation should include the cost to establish the alternate service.

Recommendation:

To accomplish this we recommend an addition of a new sub paragraph to Section 174 which would read:

> "Where, pursuant to a recommendation made under subsection 173(1), a branch line of one company is connected with a line of another company and is thereafter operated by that other company, that other operating company may file a claim with the Agency for the payment of
>
> (a) an amount equal to its actual loss attributable to the branch line; and
>
> (b) an amount equal to its expenditures incurred in so connecting the branch line.
>
> (c) an amount equal to the amount incurred in establishing an alternate railway.

Issue:

Limitation of amount of payment under transitional funding for "protected" lines. (S.175)

Concern:

Legislation is already established to maintain certain "protected" lines through to the year 2000. The period for transitional funding for the "protected" lines should also last to the year 2000.

Recommendation:

Section 175 should be amended by the addition of a new sub-section, reading as follows:

> "Notwithstanding limits shown in subsection (3) and subsection (7), where a branch line or segment thereof was part of the "protected" lines under Section 258(1) of the Railway Act, an agreement entered into under subsection (1) or subsection (6) shall provide for the payment of amounts in respect of the area served by a branch line or segment thereof that equals the estimated amount of the actual loss attributable to the line or segment that would in the opinion of the Agency be incurred by the railway company during the period following the date of the agreement until the year 2000 if the line or segment were operated during that period."

Issue:

Ability of grain dependent branch lines to receive assistance under the provisions for alternative transportation facilities. (S.173(3), S.175(1) & (6))

Concern:

While the primary source of transitional funding for grain dependent lines should be from the funds controlled by the Western Grain Transportation Act (WGTA), it needs to be supplemented. In a number of cases there are non-grain users on the rail line and there are often impacts on local municipalities and provinces. Section 175 recognizes such negative impacts and the need to compensate persons and publish bodies adversely affected by an abandonment. However, Section 175 precludes its application to grain dependent branch lines. The government of Alberta strongly recommends that this exclusion of grain dependent lines be removed.

Recommendation:

Paragraph (3) of Section 173 and paragraphs (1) and (6) of Section 175 be amended to delete the words which exclude grain dependent lines, which makes them read as follows: (*** indicated word(s) deleted)

> 173.(3) In performing its duties under section 163 to 172, the Agency may recommend to the Minister that the Minister enter into an agreement under subsection 175(1) if, in the opinion of the Agency, it would be more cost-effective to improve alternative transportation facilities in the area served by a branch line or a segment thereof, *** than to continue to make payments under section 178 to the railway company that operates the line or segment.
>
> 175.(1) The Minister may enter into an agreement with the government of a province or municipality or with any shipper, or association or other body representative of shippers, on a branch line to provide, out of money appropriated by Parliament for that purpose, for the payment of contributions to improve alternative transportation facilities in the area served by the line or a segment thereof, *** if in the opinion of the Minister it would be more cost-effective to improve alternative transportation facilities in the area served by the line or segment than for payments to continue to be made under section 178 to the railway company that operates the line or segment and
>
> (6) Where the Agency has ordered under section 165 or 166 that the operation of branch line or segment, *** be abandoned, the Minister may enter into an agreement with the government of a province or municipality with any persons who are regular shippers by rail on the

line on the date that the order made or with any association or other body representative of those shippers to provide out of money appropriated by Parliament for that purpose, for the payment of contributions to assist in the transition to improve transportation facilities in the area served by the line or segment, if in the opinion of the Minister it has been demonstrated that one or more shippers would suffer significant economic harm as a result of the abandonment of the operation of the line or segment.

Issue:

Persons, Municipal or Provincial Governments should not be bound by Agency determination of actual loss, or by methodology laid down for calculation.

Concern:

Certain portions of the Act make statements that involve persons, or governments other than the Federal government participating in financial assistance connected with alternatives under branch line abandonment. While neither denying nor accepting a role in this financial assistance, the province does not consider it should be bound to some amount by the calculation of the Agency, or by the methodology which the Agency may develop.

Recommendation:

It is recommended that a new section be developed to clearly prevent any misunderstanding as to responsibility.

To accomplish this legislation should be amended by the addition of a new clause in the area of Section 178, reading:

> "Where a person, municipality or provincial government has indicated an interest in participating in payment of funds relative to the actual loss attributable to a line or segment, the person, municipality or provincial government, is not bound by the Agency determination of actual loss, nor by the rules and regulations of the Agency which establish their methodology for calculation."

## SECTION 180

Issue:

Publication of data relative to operation of branch lines for which railways received payments under the Acts. (S.180)

Concern:

The description of data to be published as respects to lines for which payments are being made under the Act is incomplete without traffic information.

In the interests of reaching a proper understanding of the effects of public expenditure traffic data will greatly add to this understanding.

Recommendation:

It is recommended that Section 180 be amended by the addition of a new paragraph reading as follows:

> "(c) the traffic information, that is, loads, tonnes and revenue for traffic originating or terminating on the line in the calendar year in respect of which the payments were made."

SPECIFIC COMMENTS

ON EXTRA-PROVINCIAL

TRUCKING LEGISLATION

ARE CONTAINED

IN SECTION 5 OF

THE ALBERTA SUBMISSION

ACCOMPANYING THIS APPENDIX

# Memorandum of Understanding Respecting
# A Federal-Provincial-Territorial Agreement on the
# Economic and Administrative Regulation of Truck Transport

**WHEREAS** the Parliament of Canada has delegated the administration of extra-provincial trucking to "provincial transport boards" under the Motor Vehicle Transport Act, R.S.C. 1970 c. M-14; and

**WHEREAS** the Council of Ministers Responsible for Transportation and Highway Safety meeting in Ottawa on May 31, 1984 agreed to immediately undertake action on the implementation of reforms to the regulation of extra-provincial trucking in Canada; and

**WHEREAS** an efficient and reliable national motor carrier transportation network is essential to the economic and social well-being of all regions of Canada; and

**WHEREAS** government regulation of highway transport is an important instrument of public economic and social development policy including the promotion of extra-provincial and international trade and commerce; and

**WHEREAS** such government regulation does impose an administrative and operational cost on motor carriers; and

**WHEREAS** it is the common objective of ministers responsible for transportation and highway safety to improve the efficiency of the motor carrier industry; and

**WHEREAS** the regulation of entry into the motor carrier industry should place primary emphasis on the effect on users of transport services; and

**WHEREAS** the ministers responsible for transportation and highway safety have agreed to take such action as is within their jurisdiction and authority to reduce the regulatory cost burden on the extra-provincial and extra-territorial motor carrier industry; and

**WHEREAS** the ministers desire to harmonize extra-provincial regulatory reform while allowing individual initiatives to be undertaken in their respective jurisdictions; and

**WHEREAS** nothing in this Memorandum of Understanding should be interpreted as an intent to inhibit a province from regulating the movement of goods by truck from place to place within a province in a manner consistent with provincial policy.

**THEREFORE**, we the undersigned, having regard to the Motor Vehicle Transport Act, and the possible necessity and desirability of amending the laws of our respective jurisdictions to make possible the initiatives outlined herein, do mutually agree to undertake the study and implementation of reforms to the regulation of extra-provincial trucking so as to create a transportation industry serving the best interests of the nation.

**SPECIFICALLY**, and without limiting the generality of the foregoing, action will be taken in a phased manner during the years 1985 and 1986 to achieve the following objectives:

a) shifting the burden of proof on entry from the applicant to the respondent in a manner consistent with the entry standards prepared by the Canadian Conference of Motor Transport Administrators and revised and adopted by the Council of Ministers;

b) eliminating the requirement to obtain approval for all extra-provincial motor carrier rates and charges;

c) developing and implementing common lists of commodities, the transportation of which may be undertaken without a requirement to prove public convenience and necessity;

d) streamlining and reducing existing licence categories on a basis which will be compatible between jurisdictions, including:

  - implementation of common commodity definitions, using the Standard Transportation Commodity Code (STCC);
  - elimination of all routing restrictions;

- elimination of the practice of specifying points beyond jurisdictional boundaries with the exception of Yukon;

e) streamlining the process of transport board licence applications including the introduction of the revised entry standards.

FURTHERMORE, in collaboration with the appropriate agencies in each jurisdiction, an integrated approach to the collection of all truck related taxes and insurance, the establishment of uniform taxation categories for commercial vehicles, and related reporting and enforcement regulatory provisions will be examined.

AND FURTHERMORE, to commence immediately to monitor the progress and results of implementation of the first phase of reform in respective jurisdictions, and to report annually in the years 1985 through 1987.

AND FURTHERMORE, by December 1985, to create a uniform national definition of the term "fitness" and to develop guidelines in respect thereof.

AND FURTHERMORE, not to limit the foregoing, further study shall be given and reported upon by September 1986, to:

a) eliminating the "Public Convenience and Necessity" test entirely in favour of a "fitness" test;

b) taking action at a regional level on appropriate further regulatory reforms;

c) expanding the common list of commodities, the transportation of which may be undertaken without a requirement to prove public convenience and necessity;

d) reviewing the effect of the elimination of the practice of specifying points beyond jurisdictional boundaries.

SIGNED THIS ________ DAY OF ________________, 1985

GOVERNMENT OF CANADA

______________________________
Minister of Transport

GOVERNMENT OF ONTARIO

George R. McCague
______________________________
Minister of Transportation and Communications

GOVERNMENT OF QUEBEC

______________________________
le Ministre des Transports

______________________________
le Ministre délégué aux Affaires
intergouvernementales canadiennes

# PROPOSED REVISED ENTRY STANDARDS

## APPLICATIONS

Applicants for operating authority shall provide, certify and satisfy the Motor Transport Board as to the following required information:

1. IDENTIFICATION

   - name, address of individual or corporation
   - individual, partnership or corporate structure
   - base of operation
   - list of current operating authorities
   - counsel or representative
   - interests of shareholders in any other transportation undertakings

2. SERVICE PROPOSAL

   - nature of proposed service (and duration)
   - geographic description of proposed service
   - anticipated traffic volumes
   - commodity as per "Standard Transportation Commodity Code"

3. OPERATIONAL PLAN

   - experience, facilities, equipment (owned/leased) and personnel to satisfy proposed application

4. FINANCIAL STATUS

   - financial information
   - adequate financial resources to carry out proposal

5. SAFETY AND FITNESS

   - programs and practices

6. SHIPPER/CONSIGNEE SUPPORT

   - certificate of support for the proposed application

At the present time, the basic procedures in the licensing process are given varying treatment throughout Canada resulting in a potential compounding of delays inherent in the regulatory process of each jurisdiction. It is proposed, therefore, to establish a new, uniform process which is compatibile with the shifting of the burden of proof (1(a) and to establish specific time frames for the completion of each segment of the process, thereby limiting the total time taken to a predetermined maximum.

1. Action: Completed application received and decision made as to whether or not the information contained therein is sufficient to publish notice of intent to grant the operating authority sought.

   Time: Fifteen working days.

2. Action: A notice is published identifying the scope of the application and announcing that the board will grant the operating authority sought effective thirty days from the date of publication unless objections are received.

   Time: Next issue of Gazette or other publication.

3. Action: The respondent files objections supported by prima facie evidence.

   Time: Prior to the expiry of the thirty days from the date of publication of application.

4. Action: The board decides if prima facie case has been made as to why the application should be denied.

   Time: Ten working days.

5. Action: If prima facie case has not been made, objection is rejected and respondent is so notified.

   Time: Immediately.

6. Action: If prima facie case has been made, a public hearing is scheduled. The parties to the hearing are notified immediately. The hearing should be scheduled to take place within forty-five days.

7. Action: Decision shall be given, in writing, not later than thirty days from the date of the closing of the record.

## BURDEN OF PROOF

To determine if a public hearing is required, the Board or Commission, following the presentation of prima facie evidence on one or more of the following, must have reasonable grounds to believe that the granting of the application would potentially be detrimental to the users of transportation services, public economic and social development, or to interprovincial and international commerce:

a. adverse impact on the stability of the trucking industry as demonstrated by a reduction in service availability, in transport choices/options or in dependability of service;

b. the applicant is unfit, unwilling or unable to provide the intended service;

c. undue reduction of competition;

d. market concentration - dominance;

e. discrimination in the area of price, service, capacity;

f. detriment to the consumer;

g. net employment impacts;

h. adverse effect on the respondent;

i. any public policy considerations declared by government.

If a public hearing is required, the aforementioned elements shall be considered in the context of benefit to users of transportation services, public economic and social development or to promotion of interprovincial and international commerce.

## PARTIES OF RECORD

Respondents with a prima facie case will be eligible to appear as full participants in a public hearing. Other interested parties may appear or make representations as the board may allow.

## CORRIDOR OPERATIONS

Operating Authority Certificates for corridor operations will be issued on an ease of entry basis with no requirement for proof of need.

## TRANSFER OF OPERATING AUTHORITY AS A RESULT OF SALE OR MERGER

A board may:

1. require any person proposing to acquire, directly or indirectly, an interest by purchase, lease, merger, consolidation or otherwise, a motor carrier undertaking to make application for the proposed acquisition to the board;

2. require all acquisitions where defacto control of a company's share capital is sold, merged or transferred to be reported to the board;

3. require public notice to be given of any proposed acquisiton;

4. allow any person concerned by a proposed acquisition, or any association or other body representing carriers or transportation undertaking affected by such acquisition, within such times as may be prescribed by the board, to lodge objection to the board on the grounds that such acquisition is prejudicial to the public interest;

5. on objection, or of its own volition, investigate and call a public hearing into the proposed acquisition, as in its opinion is necessary or desirable in the circumstance and in the public interest;

6. may amend, disallow or cancel an operating authority certificate if such acquisition is deemed not in the public interest;

7. require satisfaction of creditors.

## RATE FILING

When the legislation of a province requires the filing of tariffs, a carrier holding an operating authority will file tariffs with the board for the movement of goods with origin or destination in the province.

## TACKING

1. Tacking will be permitted when two or more operating authorities under common ownership are "tacked trogether" to provide a through service when operated through a point common to both certificates, provided that:

a. each of the authorities to be tacked contains a common point where pickup and delivery service is authorized; and

b. there is no restriction against interlining (or tacking) at such common point in any of the operating certificates.

## OPERATING AUTHORITY CERTIFICATES

1. Except when carrying exempt commodities, all for-hire carriers will be required to hold current certificates outlining the extent of the authorities issued by the appropriate provincial boards.

2. Private carriers will not be issued certificates of operating authority.

3. The operating authority certificate will be granted on a continuous-until-cancelled basis, and will contain common commodity definitions and other relevant information consistent with the simplification guidelines addopted by CCMTA from time to time.

4. Certificates will be written to border points only of issuing jurisdictions, to be exercised in conjunction with complementary authorities as authorized by other jurisdictions.

## SECTION 210

### Issue:

Erosion of traffic base by small unregulated carriers (S.210(2)).

### Concern:

The volume of traffic available to existing northern marine resupply carries does not readily support the entrance of new carriers. This is recognized in Part V wherein a new entrant must illustrate the means to provide the service and that a need for the service exists. However, carriers with a fleet capacity less than 100 register tons may operate services without meeting this requirement. To the extent that such carriers may erode the traffic base of regulated carriers, especially cargo of high value to the carrier, measures to regulate entry of small carriers (carriers with fleets of 100 gross tons) should be in place.

### Recommendation:

Section 210(2)(a) should not apply where annual average traffic volumes of a water system for the previous 5 years is less than 15,000 tonnes.

## SECTION 225

Issue:

The granting of "grandfather" rights to carriers providing service prior to implementation of legislation (S.225).

Concern:

The use of the provisions in section 225 to ensure that existing carriers maintain their historical privileges of providing services is justified. However, basing such privileges solely on "the year immediately prior to the coming into force of this section" creates opportunities for carriers to enter the market without any intention of providing long term (5 to 10 years) service to the communities.

Recommendation:

It is recommended that the basis for "grandfather" rights be increased from one year to five years.

Section 225 could be amended to read "the five (5) years immediately prior to".

Issue:

The definition of a commodity pipeline (S.228).

Concern:

Most coal mine operations in Western Canada include a coal preparation plant to size the coal, to remove ash and other non-coal materials and to condition the final quality of conventional coal products. As the definition of "commodity pipeline" now stands, such legitimate portions of coal mining operation could be classified as part of a "commodity pipeline". Regulations of this nature would be, in comparison with the rail transportation of coal, inequitable.

Recommendations:

It is recommended the definition of commodity pipelines be limited by stipulating that the facilities described are "facilities which are expressly constructed for the purpose of transportation".

## SECTION 242

Issue:

The payment of costs incurred by the agency in ensuring compliance with terms of and conditions of a permit.

Concern:

As a service in the national interest, (ie "ensuring compliance") it is appropriate that the public pay the costs. The cost of compliance should not be charged to the carrier.

Recommendation: It is recommended that section 242 be eliminated.

SECTION (NEW)
PART VI

Issue:

Batching of commodities through non-commodity pipelines.

Concern:

Products such as methanol and anhydrous ammonia, can be shipped in batches in conventional crude pipelines. Alternately, shippers of hydrocarbons regulated by the NEB Act may seek access, if in their best interests, to commodity pipelines. Under these circumstances the two pieces of legislation, NEB Act and NTA, could well become competitive or come into conflict.

Recommendation:

It is the view of the province that further provisions are required to provide for the "batching" of hydrocarbons and commodities.

SECTIONS 251 AND 253

Issue:

Acquisition by government of Canadian Transportation Undertakings (S.251 and S.253(4).

Concern:

Prevention of government acquisition limits options for initiatives to strengthen the regional economy. It is not appropriate that when one government acts in the public interest, another government should pass judgment on its actions.

Recommendation:

Part VII of NTA 1986 be amended to remove the power of the National Transportation Agency to review the acquisition of a transportation company by another government.

It is recommended that the definition of person in Section 251 be amended to exclude "government or agency thereof".

(*** indicates words deleted)

> "'person' means any individual, body corporate, *** partnership, unincorporated syndicate, unincorporated organzation, trustee, executor, administrator or other legal representative."

Issue:

Input to annual and four year reviews (S.266 & 267).

Concern:

It is extremely important that the reviews, both the annual and the comprehensive in 1992, secure the best coverage possible from parties to the development of the legislation. On this basis it is believed that there should be emphasis placed on securing input from all interested parties.

Recommendation:

Legislation be amended to ensure all interested parties are asked to present material as to the factors covered in the legislation.

To accomplish this, we recommend that Sections 266 and 267 be amended by the addition of a clause reading

> "in proceeding with this review, the reviewer will solicit input from all interested parties."

Issue:

Public availability of information necessary to facilitate the working of the legislation.

Concern:

It is a concern that the various innovations and improvements in opportunity for shippers and carriers to handle their affairs in the marketplace not be hampered by the lack of information.

There are aspects of final offer arbitration, competitive line rates, abandonment, to mention a few that require both cost and traffic information if shippers are going to make good decisions, without having to come to government for data.

There are in place some data dissemination systems, both directly through the Canadian Transport Commission and through StatsCan. These must be maintained and augmented. In particular the Agency should prepare and release a comprehensive rail cost index.

Recommendation:

Alberta recommends that the legislation be amended so as to ensure that powers of collection and dissemination of information are available, and systems of information release to the public be developed.

Add a new Section in the area of Section 268 reading

> "(a) The Agency shall collect, analyze, organize and publish information in such a form as needed to fulfill the workings of this Act and the Railway Act, and, may subject to the approval of the Governor-in-Council, when the information is not readily available to the Agency from other sources in a form suitable for the purposes of the Agency's. Responsibility under this Section, make recalculations requiring carriers to provide information to the Agency or its representative for those purposes at such times and in such form and manner as the regulations may specify."
>
> "(b) in respect of this responsibility to publish the Agency shall not less often than annually, publish such indices as may be appropriate".

## SECTION 268

### Issue:

Availability of information for governments.

### Concern:

It is a concern that beyond the availability of information for the public, there is need for disclosure to governments to permit their carrying out their mandate.

Section 268 provides the Federal Minister with the opportunity to ask for information not previously covered by other data releases on all carriers.

Sections 330 through 331.4 of the Railway Act provides both the Federal Minister and the provinces with the ability to secure information as respects the costs of railways.

As it has become an argumentative area assurance is needed that governments will be able to use necessary analytical skills whether in direct employ or under consulting contracts.

What is necessary to add is the ability for the provinces to ask the Federal Minister for information in the same scope as Section 268 consideration.

### Recommendation:

Alberta recommends that the legislation be amended to allow the province to request the Minister to secure information and to legislate the right of government users of cost data to make use of consultants.

To accomplish this recommendation, there should be the addition of a new section following Section 268 reading:

> "(1) Where the government of a province requests information in respect of transportation services and operation, the Minister may, in writing, request any company to furnish him with the information in such manner and to such extent as he may specify.
>
> (2) The Minister may, upon receipt of the information requested by him from the company, release the information to the government of the province that request it if that government has undertaken to treat the information as confidential."

As well, Section 269 shall be amended by the addition of a new subclause reading:

"(2) Subsection (1) does not apply so as to prohibit the communication of information to
(a) A Minister of the Crown in right of Canada or a province,
(b) An officer of employee of Her Majesty in right of Canada or a province, or
(c) A person employed in a consulting capacity, where as an agent, or otherwise by Her Majesty the Queen in right of Canada or a province who received the information referred to in that subsection in the course of his duties."

and amend Part VIII by inserting a new section following after Section 349

"Subsection 331.3(2) of the said Act is repealed and the following substituted therefore

(2) Subsection (1) does not apply so as to prohibit the communication of information to
(a) a Minister of the Crown in right of Canada or a province,
(b) an officer or employee of Her Majesty in right of Canada or a province or
(c) a person employed in a consulting capacity, whether as an agent, or otherwise by Her Majesty the Queen in right of Canada or a province

who receives the information referred to in that subsection in the course of his duties."

SECTION (NEW)
PART VIII
DIVISION II

Issue:

Development of costing guidelines (Part VIII).

Concern:

Even without Bill C-18 there has been a growing need to review railway costing procedures. This need is greatly magnified by the many provisions in the new legislation which require railway cost determinations.

In past, cost reviews have been focussed on the analysis of individual railway cost components to determine their degree of variability with traffic. Another review of this nature is not required. Rather the need is for a review of cost components to establish which are relevant for each of the various end uses. For instance, cost of capital is not always relevant for costing backhaul traffic movements.

Such a review should not be constrained by predetermined statements in the legislation of the relevance or irrelevance of various costs. Section 348 amends the old cost determinations sections in the Railway Act but retains the restrictive covenants. In the U.S. a similar need was identified in the Staggers Act and the Railway Accounting Principles Board was established to conduct such a review as the one which is suggested here.

The Government of Alberta recommends that costing procedures relative to the various end uses be reviewed as soon as possible. Such a review should be modelled on the process used by the Railway Accounting Principles Board.

Recommendation:

To accomplish this it is recommended that Section 348 be amended by the deletion of the paragraph suggested to amend Section 329 of the Railway Act, and substitute the following:

> "Subsection 329(1) of the said Act is repealed."
>
> "The following paragraph is added as a new subsection in Section 329 of the said Act".
>
> "The Commission shall institute a review of the portions of the National Transportation Act, and this Act, requiring costing activity, and shall, within six months, prescribe the items that shall be used in the development of factors in costing as it applied to each end use."